

**Proposed**  
**Town of Malone**  
**Zoning Law**

November 17, 2007

# CONTENTS

ARTICLE 1	GENERAL PROVISIONS.....	1
Section 100	Title and Enactment Authority .....	1
Section 105	Purposes .....	1
Section 110	Prior Laws .....	1
Section 115	Conflict with Other Laws .....	1
Section 120	Severability.....	1
ARTICLE 2	PERMITS AND PROCEDURES.....	2
Section 200	Regulated Uses .....	2
Section 210	Zoning Permit Types.....	3
Section 215	Required Information for Application.....	3
Section 220	Fees .....	4
Section 225	Issuance of Zoning Permits.....	4
Section 230	Termination of Permit.....	4
Section 235	Certificate of Occupancy .....	4
ARTICLE 3	DEFINITIONS .....	5
Section 300	Word Interpretation .....	5
Section 310	Definitions.....	5
ARTICLE 4	ZONING DISTRICT REGULATIONS .....	17
Section 400	Types of Districts .....	17
Section 405	Zoning Map.....	17
Section 410	Interpretation of District Boundaries on Zoning Map .....	17
Section 415	Lots in Two or More Zoning Districts .....	17
Section 420	Use Regulations .....	18
Section 425	Lot Size and Dimension Chart.....	18
Section 430	Green Space Buffer .....	18
Section 435	Access through SC Zone .....	18
Section 440	Measurement of Building Setbacks .....	19
Section 445	Maximum Height of Structures .....	19
Section 450	RS Zone Regulations.....	19
Section 455	Boathouse Overlay Zone .....	20
Section 460	Access to Lake Titus.....	21
Section 465	River Protection Overlay Zone .....	21
Section 470	Airport Approach Protection Area.....	21
ARTICLE 5	SUPPLEMENTAL REGULATIONS .....	22
Section 500	Residential Principal Buildings Per Lot .....	22
Section 505	Existing Undersized Lots of Record.....	22
Section 510	Non-conforming Building Setbacks.....	22
Section 515	Non-conforming Uses and Structures.....	22
Section 520	Stream and River Protection .....	23
Section 525	Off-Road Parking .....	23
Section 530	Storage of Petroleum Based Products.....	24
Section 535	Outdoor Lighting .....	24
Section 540	Fences and Hedges.....	24
ARTICLE 6	SIGN REGULATIONS.....	25
Section 610	Prohibited Signs.....	25
Section 615	Signs Not Requiring Zoning Permit. ....	25
Section 620	Permitted Signs .....	26
Section 625	Placement of free standing signs.....	27
Section 630	Computation of sign area .....	27
Section 635	Other regulations. ....	27
Section 640	Unsafe, Illegal and Obsolete Signs.....	27

Section 645	Non-Conforming Signs.....	27
Section 650	Sign Variances.....	27
<b>ARTICLE 7 ADDITIONAL REGULATIONS FOR CERTAIN USES.....</b>		<b>28</b>
Section 700	Adult Uses.....	28
Section 702	Bed And Breakfast Establishment.....	30
Section 704	Campground, Recreational Vehicle Park.....	30
Section 706	Condominium and Cooperative Development.....	30
Section 708	Fuel Distribution Business.....	31
Section 710	Home Based Business with Vehicles or Equipment.....	31
Section 712	Home Based Manufacturing.....	31
Section 714	Home Occupation.....	32
Section 716	Individually Sited Mobile Homes.....	32
Section 718	Junkyards.....	33
Section 720	Keeping of Farm Animals.....	34
Section 722	Kennels, Animal Hospitals.....	34
Section 724	Mineral Extraction, Commercial Sand or Gravel Extraction.....	35
Section 726	Mobile Home Parks.....	35
Section 728	Motor Vehicle Service and/or Repair.....	37
Section 730	Recreational Vehicles not in Recreational Vehicle Parks.....	37
Section 732	Residential Cluster Development, Residential Cluster Subdivision.....	37
Section 734	Retail Gasoline Sales.....	38
Section 736	Seasonal Roadside Stands.....	38
Section 738	Telecommunication Towers.....	39
Section 740	Windpower Generating Facilities.....	39
Section 742	Yard, Porch or Garage Sales.....	39
<b>ARTICLE 8 SITE PLAN REVIEW AND APPROVAL, SPECIAL USE PERMITS.....</b>		<b>39</b>
Section 800	Site Plan Review and Approval, General Provisions.....	39
Section 805	Special Use Permits, General Provisions.....	39
Section 810	General Site Plan Approval Standards.....	40
Section 815	Scenic Corridor District Standards.....	42
Section 820	River Protection Overlay District Standards.....	42
Section 825	Special Use Standards.....	42
Section 830	Conditions.....	43
Section 835	Application for Site Plan Approval and/or Special Use Permit (Minor Projects).....	43
Section 840	Application for Site Plan Approval and/or Special Use Permit (Major Projects).....	43
Section 845	Waiver of Submission Requirements.....	44
Section 850	Reimbursable Costs.....	44
Section 855	Procedure.....	44
Section 860	Procedure if Variance Is Required.....	45
Section 870	Procedure if Located within RP Zone.....	45
<b>ARTICLE 9 APPEALS to the Zoning board of appeals.....</b>		<b>46</b>
Section 900	Application for Variance.....	46
Section 910	Requirements for Area Variances.....	46
Section 920	Requirements for Use Variances.....	46
Section 930	Grant of Variance with Conditions.....	47
Section 940	Appeals of a Decision by the Zoning Enforcement Officer (ZEO).....	47
Section 950	Review and Approval Procedure.....	47
<b>ARTICLE 10 ADMINISTRATION.....</b>		<b>48</b>
Section 1000	Zoning Enforcement Officer.....	48
Section 1005	Duties of the Zoning Enforcement Officer.....	48
Section 1010	Planning Board.....	48
Section 1015	Powers and Duties of Planning Board.....	48
Section 1020	Meetings of the Planning Board.....	49
Section 1025	Zoning Board of Appeals.....	49
Section 1030	Powers and Duties of the Zoning Board of Appeals.....	49

Section 1035	Meetings of the Zoning Board of Appeals .....	49
Section 1040	Amendments.....	50
<b>ARTICLE 11</b>	<b>ENFORCEMENT .....</b>	<b>50</b>
Section 1100	Steps in the Enforcement Process .....	50
Section 1105	Violations .....	50
Section 1110	Stop Work Order.....	51
Section 1115	Appeals .....	51
Section 1120	Actions for Injunction.....	51
Section 1125	Criminal Justice Proceedings .....	51
Section 1130	Fines and penalties.....	51
Section 1135	Alternative or Additional Actions and Remedies.....	52
Section 1140	Suspension of administrative review.....	52
Section 1145	Revocation of permit .....	52
Section 1150	Removal of Violations .....	52

## **ARTICLE 1 GENERAL PROVISIONS**

### ***Section 100 Title and Enactment Authority***

- A. This Local Law may be cited as the "Town of Malone Zoning Law," and shall include this text and the official zoning map.
- B. Enactment of this Local Law by the Town is pursuant to Article 16 of the Town Law of the State of New York and Article 27 of the Executive Law of the State of New York and the Municipal Home Rule Law of the State of New York.

### ***Section 105 Purposes***

The overall purpose of this law is to promote the health, safety, and general welfare by regulating the density of population, and the location, intensity and use of buildings, structures and land. Further purposes of this law are to implement the goals and policies of the Town of Malone Comprehensive Plan of 2007 and any amendments thereto.

### ***Section 110 Prior Laws***

- A. This law shall replace and supersede the prior existing "Zoning Regulations for the Town of Malone, New York" as set forth in Chapter 79 of the Code of the Town of Malone, and any amendments thereto.
- B. This law shall replace and supersede the prior existing Chapter 40 of the Code of the Town of Malone, "Home Occupations."
- C. This law shall replace and supersede the prior existing Chapter 42 of the Code of the Town of Malone, "Incinerators, Commercial."

### ***Section 115 Conflict with Other Laws***

Whenever the requirements of this law are at variance with the requirements of any lawfully adopted rules, regulations, law or statutes, the most restrictive or those imposing the higher standard shall govern.

### ***Section 120 Severability***

Should any section of or provision of this law be decided by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

## ARTICLE 2 PERMITS AND PROCEDURES

### **Section 200 Regulated Uses**

- A. No person shall undertake any of the following unless a town Zoning Permit has been issued by the Zoning Enforcement Officer.
1. Construction of any new building or structure one hundred and forty four (144) square feet or larger in ground coverage, except swimming pools.
  2. Expansion or enlargement of any existing non-residential structure by twenty five (25) percent of more of gross floor area.
  3. Placement of a mobile home or the replacement of an existing mobile home with another mobile home.
  4. Change in the use of a building or of land, except as provided in Parts B and C of this section.
  5. Construction or enlargement of parking lots for non-residential uses (see Section 525).
  6. Signs, except as provided in Section 615.
  7. Keeping of farm animals under some circumstances as provided in Section 720.
- B. The following activities do not require the issuance of a town Zoning Permit, but must meet the building setbacks and other requirements of this law.
1. Expansion or enlargement of an existing residential structure, or expansion or enlargement of an existing non-residential structure by less than twenty five (25) percent of gross floor area.
  2. Any swimming pool as defined herein.
  3. Certain signs, as provided in Section 615.
  4. Keeping of farm animals under some circumstances as provided in Section 720.
  5. Fences and hedges, as provided in Section 540.
  6. Storage or occupancy of a recreational vehicle, as provided in Section 730.
  7. Seasonal roadside stands, as defined herein.
  8. Yard sales, porch sales, garage sales and sales of a similar nature shall comply with Section 742.
- C. The following activities are not regulated by this law and do not require a town Zoning Permit.
1. Buildings or structures smaller than one hundred and forty four (144) square feet in ground area, except as provided in subsection B above.
  2. Expansion or enlargement of any structure that results in a finished structure less than one hundred and forty four (144) square feet in ground area, except for seasonal roadside stands as defined herein.
  3. Interior structural alterations, or routine maintenance and improvement, which does not expand the exterior dimensions of a structure.
  4. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this law.
  5. Non-structural horticultural or gardening uses.
  6. The erection of chimneys, posts and other similar structures.
  7. Certain signs, as provided in Article 615,
  8. Timber harvesting.
  9. Non-commercial sand or gravel extraction.
  10. A portable sawmill in use on any one property less than 31 days within any consecutive 12 month period.

**Section 210 Zoning Permit Types**

Under the terms of this Law, the following classes of Zoning Permits may be issued.

- A. Permitted Use. A Zoning Permit for a permitted use shall be reviewed by the Zoning Enforcement Officer on his own authority. (Permitted uses are shown with an “x” on Schedule A of this Law.)
- B. Allowed after Site Plan Approval. Uses designated by the letter “p” on Schedule A herein require Site Plan Approval by the Planning Board before a Zoning Permit may be issued.
- C. Allowed after issuance of Special Use Permit. Uses designated by the letter “S” on Schedule A herein require the issuance of a Special Use Permit by the Planning Board before a Zoning Permit may be issued.
- D. Allowed after a decision by the Zoning Board of Appeals. A Zoning Permit shall be issued by the Zoning Enforcement Officer after issuance of a variance by the Zoning Board of Appeals or as a result of a ruling on an appeal heard by the Zoning Board of Appeals. (See Section 940.)

**Section 215 Required Information for Application**

Unless otherwise stated, all petitions, applications and appeals shall be made on forms prescribed by the Planning Board or Zoning Board of Appeals. Completed forms shall be accompanied by such further information, plans or specifications as may be required by such forms, and by the Zoning Board of Appeals and/or the Planning Board. The following are required in order to constitute a complete application.

- A. Map. Three (3) copies of a property map, drawn to scale, shall be submitted with all applications. The map shall be either a Plot Plan Map or a Site Plan Map for Major Projects.
  - 1. Plot Plan Map. A Plot Plan is required with all applications for minor projects as defined herein. Such map shall contain sufficient information to enable the Zoning Enforcement Officer, the Planning Board and/or the Board of Appeals to make an informed decision. Such map shall show as appropriate: dimensions and location of the lot, exact size and location of all existing and proposed buildings, proposed location of water and sewage disposal systems, parking areas, driveway location, watercourses, ponds, surface drainage patterns and location of existing or proposed easements.
  - 2. Site Plan for Major Projects. A Site Plan for Major Projects is required for all major projects that require Site Plan Approval. (See Section 840.) The map shall be prepared by a professional architect, landscape architect, engineer, or surveyor.
- B. Tax map of parcel proposed for land use and development showing adjacent properties.
- C. Evidence of property ownership, agreement or option to purchase, with all parties represented, must be provided at the time of application.
- D. Licenses. Any use currently licensed by Federal, State, County or Town Agencies and already operating within the town shall present evidence or currently valid licenses before any expansion permits are considered.

- E. Environmental Assessment Form, Part I, if required by the New York State Environmental Review Act.
- F. Waterfront Assessment Form for projects within the River Protection Overlay Zone, if applicable.
- G. Fee. The appropriate fee established by the Town Board in its fee structure shall be collected at the time of application.

**Section 220 Fees**

Application fees shall be established by resolution of the Town Board.

**Section 225 Issuance of Zoning Permits**

When all requirements of this Law have been met, the Zoning Enforcement Officer shall issue a Zoning Permit and return one copy of the approved map to the applicant. One copy of the approved permit and approved map shall be filed in the Town Clerk's Office. If the permit has been denied, the reasons for denial shall be stated in writing and returned to the applicant.

**Section 230 Termination of Permit**

- A. A Zoning Permit for any building for which construction has not been commenced two (2) years after issuance, or for any use which has not been commenced two (2) years after issuance, shall expire, and such building and/or use may not be established nor construction begun unless a new permit has been issued.
- B. For purposes of this section, land use and development shall not be considered as having been commenced when merely the following have been undertaken: digging of soil test pits, performing soil percolation tests and other minor site inspections, the staking of lots, or the securing of other approvals or permits required by law.

**Section 235 Certificate of Occupancy**

No person shall occupy or use a structure or area of land requiring a Zoning Permit until Certificate of Occupancy has been issued by the Zoning Enforcement Officer. The applicant shall notify the Zoning Enforcement Officer when the structure is ready for final inspection. If satisfied that the applicable State and local regulations pertaining to the project have been complied with and that the project has been completed as specified on the approved application, the Zoning Enforcement Officer shall issue a Certificate of Occupancy granting permission to occupy or use the structure.



## ARTICLE 3 DEFINITIONS

### ***Section 300 Word Interpretation***

Except where specifically defined herein all words used in this law shall carry their customary meaning. Doubt as to the precise meaning of a word or phrase shall be decided by the Zoning Board of Appeals.

### ***Section 310 Definitions***

Accessory Use. Any use of a structure, lot or portion thereof that is customarily incidental and subordinate to and does not change the character of the principal land use or development on the lot, including in the case of a residential structure, any professional, commercial and artisan activities and other "home occupations" carried on by the residents of such structures.

Accessory Structure. A structure which is physically separate from the principal building and customarily incidental and subordinate to a principal land use or development, including but not limited to garages, sheds, swimming pools, alternative energy systems, workshops, docks and boathouses.

Active Farmland. Not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. (This definition is intended to be consistent with the definition of "land used in agricultural production" in Article 25-AA of the New York State Agriculture and Markets Law.)

Adult Book and/or Video Store. A commercial establishment which has as a substantial or significant portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following: books, magazines, periodicals, or other printed matter or photographs, films, videos, slides or other visual representations, which are characterized by the exposure or emphasis of specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities which are for sale, rental, or viewing on or off the premises. An establishment may have other principal business purposes that do not involve the offering for sale or rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult book and/or video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult book and/or video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.

Adult Entertainment Cabaret. A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters or waitresses, male or female impersonators or exotic dancers, or other similar entertainment or films, motion pictures, videos, slides, or other photographic material, or which utilizes employees, as part of their employment, to regularly expose patrons to specified sexual activities or specified anatomical areas. This definition shall include establishments that serve alcohol, as well as those that do not serve alcohol.

Adult Motion Picture Theater. Any motion- picture theater where, for any form of consideration, films, motion pictures, videocassettes, slides, or other photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult Theater. A theater, concert hall, auditorium, or similar establishment which, for any form of consideration, regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas.

Agricultural Use. Management of any land for general farming, truck gardening, nurseries, greenhouse, orchards; raising of cows, horses, pigs, poultry and other livestock for gain or profit; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.

Agricultural Use Structure. Any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use.

Airport. A place on land designed for the take-off and landing of aircraft.

Animal Hospital. A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

Applicant. An individual, corporation, partnership, association, trustee, municipality, county, or other legal public or private entity applying for a permit, approval, or variance having a legal interest in the property that is the subject of the application.

Assisted Living Facility. A residential facility that accepts persons who by reason of physical or other limitations are unable to live independently, and which is primarily for domiciliary care rather than nursing or medical care.

Bed and Breakfast Establishment. A dwelling with one or more rooms for overnight accommodation to transient paying guests, and that satisfies the standards of Section 702 . Similar establishments that do not qualify under Section 702 shall be deemed to be tourist accommodations.

Board of Appeals. Town of Malone Zoning Board of Appeals.

Building. Any roofed structure intended for the shelter, housing or enclosure of persons, animals or property.

Business Office. An office or place of business that does not involve the sale of goods or the keeping of stock in trade. Business offices include, but are not limited to, offices of real estate, insurance, accountants, doctors, dentists, attorneys, architects, surveyors, engineers, psychologists, and chiropractors.

Campground, Recreational Vehicle Park. Property consisting of a tract of land and providing ground areas for two (2) or more recreational vehicles, travel trailers, tents or other temporary or vehicular structures for over-night occupancy, primarily but not exclusively for recreational or vacation purposes.

Commercial Incinerator. Any operation that includes the incineration of any waste material for financial gain or profit. Such operation shall include, but shall not be limited to: landfills; dumps; or dumping grounds intended to contain, store, or stockpile solid, liquid, medical or any other kinds of waste. Any electrical cogeneration facility in existence as of November 20, 1996 and possessing all necessary permits shall not be deemed to be a commercial incinerator. (See also definition of waste material.)

Commercial Use. Any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee.

Condominium. A form of ownership of a building or group of buildings and/or land in which dwelling units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. The purchaser has title to his or her interior space in the building and an undivided interest in parts of the interior, the exterior, and other common elements.

Contractual Access. A right other than fee-simple ownership to enter upon and travel across a lot including use of any features and resources on the lot and on water adjoining the lot, granted through deed, contract, covenant, membership or other means

Cooperative. A multi-unit project of dwelling units, offices or commercial shops which may include one or more buildings on the same lot or property whereby dwelling units, offices, shops or spaces, common areas and facilities are owned by an organization, independent corporation, partnership or other entity for the benefit of those using or occupying the property.

Day Care Center. A site or building, or portion thereof designed and/or operated to provide day care and/or instruction for four or more persons, and operated for a fee, excepting state licensed "group family day care" and "family daycare" facilities for children operating solely within dwellings as provided in Section 390 of the Social Services Law.

Disposal. The discharge, deposit, injection, dumping, spilling, leaking, incineration or placement in or on any land or water so that material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

Dwelling Unit. One room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking and sleeping facilities, designed for occupancy by one family.

Erect a sign. To build, construct, alter, enlarge, relocate, attach, hang, place, affix or maintain any sign, and includes the painting of wall signs.

Family. One or more persons occupying a dwelling unit as a single functional family.

Firing Range. A site or building used for the orderly discharge of firearms at targets which may function as a commercial use or part of a private club.

Forestry use. Any management, including logging, of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of wood roads, skidways, landings, fences and forest drainage systems.

Forestry use structure. Any barn, shed, garage, research, educational or administrative building or cabin directly and customarily associated with forestry use.

Functional Family. Group of persons sharing a dwelling unit and acting as a family unit, including but not limited to: (a) family members related by blood, marriage or adoption, (b) unrelated individuals owning or renting a premises as a group, and sharing kitchen, bathroom, and living area rooms, and (c) assisted living facilities occupying a single family dwelling or a two family dwelling. This definition does not include persons occupying boarding houses, lodging houses, bed and breakfast establishments, motels, or hotels.

Gross Floor Area. The total floor area to be used or intended to be used by tenants of a dwelling, or for services to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sales of merchandise. It shall not include unenclosed porches and decks. It shall not include areas used principally for non-public purposes such as storage, incidental repair, employee restrooms, fitting or alteration rooms or general maintenance or enclosed pedestrian malls or corridors.

Group Camp. Any land or facility for seasonal housing and recreational educational or business; related use by private groups or semipublic groups, such as Boy or Girl Scout Camp, fraternal lodge or university or college conference center outside the campus.

Hazardous Chemicals. Solid, liquid or gaseous substances which pose a potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed, including but not limited to hazardous substances designated by the U.S. Environmental Protection Agency under Section 311 of the Clean Water Act (40 CFR 116).

Hazardous Waste. A waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (a) cause or contribute to an increase in mortality or an increase in irreversible, or incapacitating reversible illness, or (b) pose a present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

Home Based Business with Vehicles or Equipment. Business operated by the resident (owner, lessee, or renter) of a residential property that involves the storage or parking on said property of a total of not more than four (4) of the following vehicles or equipment: truck or trailer greater than 20 feet in length, any piece of earth moving equipment, any well-drilling rig, or any other similar heavy equipment or vehicle used in the conduct of the business. Such businesses include, but are not limited to, independent trucking, construction, well drilling, or earth moving businesses.

Home Based Manufacturing. A commercial use located on the property where the business owner resides involving the manufacture and sale of goods, including but not limited to: wood products, furniture, boats, canoes, ceramics, quilts, baskets, crafts or electronic or computer equipment.

Home Occupation. Any personal, professional, service or business use conducted entirely within a dwelling or accessory building and carried on by a resident of the dwelling unit, which use is clearly incidental and secondary to the use of the property for residential purposes and that does not change the exterior residential character thereof.

Hunting and Fishing Cabin. A cabin, camp or lean-to or other similar structure designed for occasional occupancy for hunting, fishing, or similar purposes, which may include a pit privy and a

kitchen sink, but may not include amenities such as electricity, utilities, mechanically pressurized water or external sanitary sewage systems.

Industrial use. Any manufacturing, production or assembly of goods or materials, including any on-site waste disposal area for wastes generated on the site. This term does not include mining.

Junk. Includes any of the following.

- a. One (1) junk vehicle
- b. One (1) piece of junk equipment, including junk farm or construction equipment
- c. Two (2) or more appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- d. Two (2) or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
- e. Any combination of the above that totals two (2) items.

Junk Appliance. Any household appliance, including but not limited to, a stove, washing machine, dryer, dishwasher, freezer refrigerator, air conditioner, water heater, or television, which is stored outside of any residence or structure.

Junk Equipment. Any equipment which meets all the following conditions: (a) It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled; (b) It is not in working order; (c) It has remained unused for more than one year.

Junk Furniture. Abandoned, discarded, or irreparably damaged furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.

Junk Mobile Home. Any manufactured housing unit designed with a chassis, and constructed to be towed or otherwise transported whole or in part to a site, and which is designed to permit occupancy for dwelling, sleeping, or storage purposes and which meets all of the following conditions: (a) it is unoccupied and in its present condition does not meet the requirements of the New York State Uniform Fire Prevention and Building Code for residential occupancy, and (b) it is either stored, abandoned, wrecked, discarded, dismantled, or partly dismantled.

Junk Storage Area. The areas of any real property used or intended to be used for the placement, storage or deposit of one or more of the following: junk appliances, junk furniture, junk mobile homes, and junk motor vehicles.

Junk Motor Vehicle. Any motor vehicle whether automobile, bus, trailer truck, tractor, motor home, motorcycle, all terrain vehicle, mini-bicycle, or snowmobile or any other device originally intended for travel on public highways which meets all the following conditions: It is (a) unlicensed or unregistered; or (b) abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or (c) not in condition for legal use upon the public highways.

The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in condition for legal use upon the highways. With respect to any motor vehicle not required to be licensed or a motor vehicle not usually used on public highways, the fact that such motor vehicle is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle unless refuted by verifiable and credible proof.

Junkyard. Includes any of the following.

- a. The outdoor storage of two (2) or more junk vehicles.
- b. The outdoor storage of one (1) or more abandoned mobile homes or travel trailers.
- c. The outdoor storage of two (2) or more pieces of junk equipment, including junk farm or construction equipment.
- d. Any open lot or area for the dismantling, storage or sale of such items as parts, scrap, or salvage of machinery, scrap metals, waste papers, rags, or used or salvaged building materials.

Kenel. Land or building in which four (4) or more dogs more than six (6) months old are housed, groomed, bred, boarded, or trained as a commercial operation.

Light Industry. Manufacturing, production or assembly of goods or materials that does not include any of the following: (a) mining of sand, gravel or other minerals, (b) sawmills, chipping mills, pallet mills and similar wood using facilities; or (c) manufacturing or assembly that involves the manufacture of hazardous chemicals; the use of petroleum-based products except as incidental to the primary industrial use; the outdoor storage of scrap metal or junk; the creation of solid, liquid, or airborne hazardous wastes; the creation of smoke or airborne particulate matter except as incidental to the main industrial use; or the creation of noise which would have an adverse impact upon neighboring properties.

Lot, Lot of Record. Land or parcel of land not divided by streets, or roads, occupied or unoccupied or to be occupied by a building and its accessory buildings, and that is recorded by deed or survey

Major project. Any project exceeding any of the thresholds for a Minor Project as defined herein.

Manufacturing. Any process whereby the nature, size, or shape of articles or raw materials is changed, or where articles are assembled.

Mean High Water Mark. The average annual high water level of a lake, pond, river, stream, creek or other body of water.

Mine. Any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; including all haulage-ways and all equipment above, on or below the surface of the ground used in connection with such excavation.

Mineral. Any naturally formed, usually inorganic, solid material located on or below the surface of the earth, including but not limited to sand, gravel, stone and soil.

Mining. The extraction of more than twenty (20) cubic yards of overburden or minerals from the earth, but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit. The term "mining" shall include the preparation and processing of minerals, including any activities or processes or part thereof for the extraction or removal of minerals from their original location and/or the preparation, washing, cleaning, crushing, stockpiling, or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use.

Minimum Building Setback from Highways, Roads or Streets. The required minimum distance between a structure, including any additions thereto, and the roadway centerline.

Minimum Lot Width. The required minimum length of width of a lot measured parallel to the front lot line at the minimum building setback from roadways, except within the RS Zoning District (see

Section 450). For corner lots, the minimum width applies to each of the roadways that the lot borders upon.

Minimum Rear Yard. The required minimum distance between a structure, including any additions thereto, and any rear lot line of the property.

Minimum Road Frontage. The required minimum length of the front lot line along its boundary with any public road line or private road line.

Minimum Side Building Setback. The required minimum distance between a structure, including any additions thereto, and any side lot line of the property.

Minor Project. Any of the following:

- a. Any project listed on Schedule A with an "x" (permitted after issuance of a Zoning Permit by the Zoning Enforcement Officer.)
- b. Construction of a multi-family structure on a lot or parcel, or on adjacent lots or parcels as one project, with fewer than five (5) units.
- c. Construction of facilities or structures for a non-residential use covering no more than two thousand (2000) square feet of building footprint.
- d. Alteration of existing structures or expansion of existing structures by no more than one thousand (1000) square feet of ground area.
- e. Conversion of existing structures to another use.
- f. Alteration and active use of five thousand (5,000) square feet or less of land, with or without structures, in connection with a use requiring site plan review and approval.

Minor residential street. A loop street, short dead end or cul-de-sac, or other roadway within a residential subdivision which is not intended to serve through traffic. Such streets are commonly constructed by developers to serve a specific residential subdivision. Any dead-end public highway that serves a residence and is less than ¼ mile (1340 feet) in length, and any private road, shall be deemed to be a minor residential street.

Mobile Home. Factory built housing at least thirty-two (32) feet in length constructed after June 15, 1976 in accordance with the federal building code, administered by the Department of Housing and Urban Development, which is designed and constructed to be used as dwelling unit when connected to required utilities, and which is assembled on site with metal frame attached, to include both single-wide and double-wide units. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. The term mobile home shall include all additions made subsequent to installation. Modular homes or other factory-built housing that are constructed in two or more main sections, and that are transported to and permanently assembled on a site with frame removed, are not considered to be mobile homes, and are considered to be single family dwellings for purposes of these regulations

Mobile Home Park. Any lot on which two (2) or more mobile homes are parked or located and for which use said premises are offered to the public or to any person for a fee of any type, including cost sharing.

Modular Home. A dwelling unit manufactured off site consisting of more than one segment, designed to be permanently anchored to a foundation, to become a fixed part of the real estate, and which meets all of the standards of the New York State Building Code. A single modular housing unit is considered to be a single family dwelling for purposes of this law.

Motor Vehicle Service and/or Repair Shop. A building or site, or portion thereof, used for making repairs to motor vehicles such as automobiles, trucks, snowmobiles, all-terrain vehicles, or lawn tractors and garden equipment. This definition includes auto body shops.

Multiple-family Dwelling. A structure containing three (3) or more dwelling units separated from each other by common wall in the form of attached housing, or placed above or below one another.

Non-conforming Structure. Any structure which is actually, substantially, and legally in existence within a given zoning district on the effective date of this Local Law or any amendment thereto, which is not in conformance with the dimensional regulations for that zoning district.

Non-conforming Use. Any use which is actually, substantially, and legally in existence within a given zoning district on the effective date of this Local Law, or any pertinent amendment thereto which is not an accessory use, a permitted use, or a use allowed by Site Plan Approval or Special Use Permit for that zoning district.

Nudity or State of Nudity. Means the appearance of "specified anatomical areas."

Open Space Recreation Use. Any recreation use particularly oriented to and utilizing the outdoor character of an area including a snowmobile, trail bike, jeep or all-terrain vehicle trail; a cross-country ski trail; a hiking and backpacking trail; a bicycle trail; horse trail; a playground, picnic area, public park, public beach or similar use.

Personal Service Establishment. Includes barber, hairdresser, beauty parlor, shoe repair, photographic studio, massage parlor, and businesses involving the care of a person or his or her apparel.

Planning Board. The Town of Malone Planning Board.

Principal Building. A building(s) in which the main or principal use of the lot is located. Any building which provides sleeping quarters shall be considered a principal building.

Private Landfill. A facility for the burial of solid wastes other than a facility operated by a municipal, county or state government or their agents or contractors.

Public Utility Use. Includes any facility constructed, erected, or operated by a municipal agency or public utility, including but not limited to: telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities; electrical, telephone, gas or water transmission or distribution cables; lines, wires, conduit, pipes, or other equipment including dams, buildings, towers, and or other structures or facilities associated with privately or publicly owned utilities. Privately owned or operated telecommunication facilities, and wind power generating facilities are not included in this definition.

Recreational or Entertainment Facility, Commercial. Any land or building that is used primarily to provide recreation or entertainment to the public for private gain.

Recreational Vehicle. A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicles are deemed to include, but are not limited to: camping trailers, fifth wheel trailers, motor homes, travel trailers as defined herein, and truck campers.



Recreational Vehicle Park. Property with designated areas for two (2) or more recreational vehicles or for the erection of tents or other structures for over-night occupancy, primarily for, but not exclusively for, recreational or vacation purposes.

Residential Cluster Development. A development on a single parcel of land or a land subdivision consisting of five (5) or more dwelling units, whereby structures are clustered closer together than otherwise would be permitted by the minimum lot size, road frontage, building setback, and other dimensional requirements of this law as specified on Schedule B herein if each structure were to be located on a separate parcel of land. A residential cluster development may consist of single-family dwellings, two family dwellings, or multiple family dwellings. A senior citizen housing development may be designed as a residential cluster development. A mobile home park shall not be deemed to be a residential cluster development; however a mobile home subdivision may be designed as a residential cluster development.

Resource Recovery Facility. A combination of structures, machinery or devices utilized to separate, process, modify, convert, treat or prepare collected solid waste so that component materials or substances or recoverable resources may be recovered or used as a raw material or energy source.

Restaurant. An establishment at which food is served to patrons on the premises, which may include the sale of alcoholic beverages provided that the sale of such beverages is clearly secondary and accessory to the serving of food.

Retail Gasoline Sales. Any establishment that sells gasoline to the public, including but not limited to automotive service stations, convenience stores, and car washes.

Retail Service Establishment. Establishments providing services, as opposed to products, to the general public, including but not limited to car washes, electrical or computer repair shops, dry cleaners, laundromats, and personal service establishments. This definition does not include motor vehicle service or repair.

Rooming or Boarding House. An accommodation located within an owner-occupied single family or a multi-family dwelling, where lodging in which at least two (2) but no more than six (6) rooms are offered for rent and which may be characterized by common dining facilities and leisure facilities available for use by the lodgers.

Sawmill. Mill for processing timber into boards and lumber, as a commercial operation. For purposes of this law the term sawmill does not include portable devices used on a temporary basis for cutting timber harvested on the property where the portable device is temporarily located.

Seasonal Roadside Stand. Buildings, structures or vehicles totaling less than one-hundred (100) square feet in ground area, that are used primarily for the sale of agricultural products no more than 62 days per year. This definition does not include operations primarily for the sale of crafts or non-agricultural items.

Senior Citizen Housing Development. A residential development that may contain attached dwelling units where at least one of the following conditions is true: (a) the federal Department of Housing and Urban Development has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program, (b) it is occupied solely by persons who are 62 years of age or older, or (c) it houses at least one person who is 55 years of age or older in a least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

Shopping Center. A single parcel of land with buildings or structures planned as a whole and intended for two (2) or more retail, office or similar uses.

Shoreline. The mean high water mark at which land adjoins the waters of lakes, ponds, rivers and streams.

Shoreline Building Setback. The shortest distance, measured horizontally, between any point of a building structure and the shoreline of any lake, pond, river, or stream navigable by canoe.

Shoreline Lot Width. The distance measured along the shoreline as it winds and turns between the boundary lines of a lot as they intersect the shoreline of any lake, pond, river, or any stream navigable by canoe.

Sign. Any sign, billboard, advertising structure or inscribed surface, pattern of artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any business, commercial, industrial, tourist or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype or advertising matter is made visible. The meaning of sign shall also include any sign currently in disuse but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

Sign, Externally Lit. A sign illuminated by a lighting device and reflecting the light thereof, but not emitting any light itself.

Sign, Free Standing. A sign supported by one or more components that is not attached to a building.

Sign, Luminous. A sign illuminated from within by electricity, gas or other artificial light, including reflective or phosphorescent light.

Single-family Dwelling. Any detached building containing one dwelling unit designed for occupancy by one family only.

Ski Center. Any trail or slope for alpine skiing; including lifts, terminals, base lodges, warming huts, sheds, garages and maintenance facilities, parking lots and other buildings and structures directly and customarily related thereto.

Solid Waste. All materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, medical and infectious waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles, and offal.

Specified Anatomical Areas. Less than completely and opaquely clothing-covered human genitals, pubic region, buttocks; and/or female breasts directly and laterally below the top of the areola; and Human male genital in a discernible turgid state even if completely and opaquely clothing covered.

Specified Sexual Activities. Human genitals in a state of sexual stimulation or arousal; or Acts of human masturbation, sexual intercourse, oral copulation, or sodomy; or

Fondling or other erotic touching of human genitals, pubic region, buttocks or breasts.

Structure. Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground or attached to something having a fixed location on the ground. Structures include, but are not limited to, buildings, additions to buildings, and swimming pools.

Swimming Pool. Any man-made, non-permeable, receptacle for water having a depth at any point greater than two feet and having a surface area of one-hundred and twenty (120) square feet or more, used or intended to be used for swimming or bathing, and constructed, installed or maintained in or above ground. An inflatable pool shall not be considered to be a swimming pool. A swimming pool shall be deemed to be a structure for all purposes under the provisions of this Law.

Tavern. An establishment used primarily for the serving of alcoholic beverages to the general public where food service may be an accessory activity.

Telecommunication Facility. Any or all of the physical elements of the central cell facility that contains all the receivers, transmitters, and other apparatus needed for cellular/pc's operation (also known as base transceiver station or BTS).

Telecommunication tower. A structure intended to support wireless communication equipment used to receive and/or transmit electromagnetic waves. Design examples of towers might include but may not be limited to self-supporting lattice, guyed, and monopole structures, water towers and buildings.

Tourist Accommodation. Any hotel, motel, resort, tourist cabin or similar facility designed to house the general public, excepting a Bed and Breakfast establishment as defined herein.

Tourist Attraction. Any man-made or natural place of interest open to the general public and for which an admittance fee is usually charged, including but not limited to animal farms, amusement parks, replicas of real or fictional places, things or people, and natural geological formations.

Townhouse. A multiple-family dwelling where individual dwelling units arranged in a row of a least three (3) such units, each on its own separate lot and where each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common walls.

Townhouse Development. A development consisting of two or more townhouses. A townhouse development is one type of residential cluster development.

Travel Trailer. A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle, and which is no longer than thirty two (32) feet. (See also definition of recreational vehicle.)

Two Family Dwelling. A building containing two dwelling units and no other uses.

Trucking Business. A facility for the storage of more than one truck exceeding gross vehicle weight of 18,000 pounds, or more than two smaller trucks, that are used principally for hire or for transporting goods not manufactured or warehoused on the site.

Unlicensed Massage Establishment. Any establishment having a fixed place of business where massages, or any other treatment or manipulation of the human body, are administered for any form of consideration or gratuity, as part of or in connection with specified sexual activities or where any person providing such treatment or service related thereto exposes specified anatomical areas. This definition shall not be construed to include a hospital, nursing home or medical clinic, or the office of the physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service by a person duly licensed to provide such service. If an unlicensed massage establishment is illegal under the laws of the State of New York, it shall not be a permitted adult use.

Warehousing. Terminal facility for handling freight, with or without maintenance facilities, and buildings used primarily for the storage of goods and materials.

Waste Disposal Area. Any area for the disposal of solid waste other than an on-site disposal area directly associated with an industrial use. (See definitions of solid waste and disposal.) Waste disposal area does not include composting facilities for the treatment of municipal sewage treatment sludge and wastes.

Waste Material. All materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, medical and infectious waste, sludge from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles, and offal.

Wind Energy Conversion System, Large (WECS, Large). A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which does not meet the definition of Wind Energy Conversion System, small.

Wind Energy Conversion System, Small (WECS, Small). A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW and which is intended to primarily reduce on-site consumption of utility power.

Wind Energy Facility. Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, as each is defined in Chapter 80 of this Code, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public Utility uses otherwise allowed under this Chapter do not include Wind Energy Facilities.

Zoning Board of Appeals (ZBA). The Town of Malone Zoning Board of Appeals.

Zoning Enforcement Officer (ZEO). The Town of Malone official designated to administer and enforce this law.

## ARTICLE 4 ZONING DISTRICT REGULATIONS

### **Section 400 Types of Districts**

For the purposes of this law, the Town of Malone is hereby divided into the following zoning districts:

R1	Residential 1
R2	Residential 2
RS	Residential Seasonal
C	Countryside
AG	Agriculture
F	Forest
SC	Scenic Corridor
CG1	General Commercial 1
CG2	General Commercial 2
MX	Mixed Use
RP	River Preservation Overlay Zone
AA	Airport Approach Protection Area
	Boathouse Overlay Zone (see map in Section 455)

### **Section 405 Zoning Map**

Zoning districts are located and bounded as shown on the “Town of Malone Zoning Map” which, with all explanatory matter, is hereby made part of this law.

### **Section 410 Interpretation of District Boundaries on Zoning Map**

- A. Where boundaries on the Town of Malone Zoning Map are indicated as generally following lot lines or the center line of roadways, zone boundaries shall be construed to follow such lines. Zone boundary setbacks from roadways are measured in feet from the centerline of roadways. Zone boundary setbacks from watercourses or water bodies are measured in feet from the mean high water mark along the shoreline. The R1 zones along County Route 25 (Duane Street) and the SC zone along State Route 30 are intended to be 500 feet from the centerline of said highways. The RC zone is intended to be 200 feet from the mean high water mark of the Salmon River.
- B. The Zoning Enforcement Officer (ZEO) shall make the determination as to the exact location of district boundaries in any individual case. Should the ZEO so decide, any issue or question may be referred directly to the Zoning Board of Appeals which shall make a determination without a formal appeal. A decision of the ZEO regarding zoning boundaries may be appealed to the Zoning Board of Appeals.

### **Section 415 Lots in Two or More Zoning Districts**

If a lot lies in two or more zoning districts, each portion of the lot shall be governed by the regulations of the district in which it lies. Upon special authorization of the Zoning Board of Appeals, and after application and public hearing, the provisions of the less restricted portion of the lot may be extended up to 100 feet into the more restricted portion. An extension of more than 100 feet shall require a variance or a zoning map amendment.

### **Section 420 Use Regulations**

- A. Schedule A, "Use Chart," of this law shall govern the types of land uses that are permitted within each Zoning District.
- B. Permitted Uses. Land uses designated by an "x" on Schedule A are allowed uses within the zoning district.
- C. Site Plan Review Uses. Uses designated by "p" on Schedule A are allowed uses only after Site Plan Approval by the Planning Board as set forth the Article 8.
- D. Special Uses. Uses designated by an "S" on Schedule A are uses allowed only after approval of a Special Use Permit by the Planning Board as set forth in Article 8.
- E. A use shall be deemed to be prohibited within a zoning district if it is not listed on Schedule A either as a permitted use, a site plan review use, or a special use within that district.
- F. Within the Airport Approach Protection Area both the use requirements of the underlying zoning district and the "Use Restrictions" of the Airport Approach Protection Area shall apply.

### **Section 425 Lot Size and Dimension Chart**

Schedule B, "Lot Size and Dimension Chart," of this law shall govern minimum required lot size, lot dimensions, building setbacks, and other dimensional requirements on a lot.

### **Section 430 Green Space Buffer**

In addition to the minimum requirements of Schedule B, the following shall apply in all zoning districts except General Commercial (CG) zoning districts.

- A. A minimum thirty (30) feet green space buffer adjacent to side and rear property lines is required for all non-residential uses that border upon an existing residential property.
- B. The green space buffer must be maintained as a vegetated area. No driveways, parking lots, or storage of materials or vehicles are permitted, nor shall the buffer be used as a work area.
- C. For purposes of this section, an existing residential property means any lot 10 acres or less in size for which the principal use is residential, and upon which a dwelling exists at the time of Special Use Permit approval and/or Site Plan approval.
- D. At the time of Special Use Permit approval and/or Site Plan approval the Planning Board may reduce the minimum required width of the green space buffer on any side without the issuance of a variance, provided that it is found that the future development or use of the adjacent property is not impaired.

### **Section 435 Access through SC Zone**

Access through the Scenic Corridor (SC) Zoning District for a use not permitted within said district is allowed provided that: (a) no structure, storage area, parking area, or any other facility other than an access road is constructed within the SC Zoning District, and (b) any sign located within the SC Zoning District shall comply with the sign regulations of the SC Zoning District. The Planning Board shall review and approve the site plan for any access road, and may require such landscaping or vegetative screening as it deems appropriate for preserving aesthetic values within the corridor.

**Section 440 Measurement of Building Setbacks**

- A. When establishing measurements to meet required setbacks, measurements shall be taken from the closest protruding part of the use or structure, to include such projecting facilities as porches, carports, and attached garages. Any accessory building physically attached to a principal building, including attachment by means of a breezeway or a roofed passageway with open or attached lattice sides, is deemed to be part of the principal structure in applying regulations.
- B. Corner lots. For purposes of determining required setbacks from lot lines, corner lots of rectangular shape shall be deemed to have two front yards and two side yards, and no rear yard.

**Section 445 Maximum Height of Structures**

- A. Measurement. Maximum building height as specified on Schedule B herein shall mean the vertical distance measured from the lowest portion of the natural grade of the building site adjacent to the building, or finished grade of cut required to accommodate the building, to the highest point of the structure, not including chimneys, antennas or other small elements.
- B. Exemptions. The following structures are exempt from the maximum height requirement specified on Schedule B herein: Houses of worship; chimneys, flagpoles; agricultural structures; electrical transmission poles and lines; and towers for fire, police and emergency communications.

**Section 450 RS Zone Regulations**

In addition to the requirements of Schedule A and Schedule B the following shall apply within the Residential Seasonal (RS) zoning district.

- A. Permitted structures and uses. Only the following accessory structures are permitted: garages, storage buildings, workshops, docks, and boathouses. Recreational vehicles used as residences are not permitted.
- B. Principal structures per lot. Only one principal structure plus one guest cottage is allowed per lot.
- C. Minimum building setback from shoreline shall be measured along the shortest line between any point of the structure and any point on the mean high-water mark.
- D. Structures Subject to Minimum shoreline setback. Shoreline setback restrictions shall apply to all porches, decks and other structures attached to a single family dwelling, and to all unattached buildings one hundred and forty four (144) square feet or larger in ground area. Shoreline setbacks do not apply to docks, boathouses, unattached decks at ground level, or patios at ground level.
- E. Minimum shoreline frontage shall be measured along the shoreline as it winds and turns.
- F. Minimum lot width shall be measured at the minimum building setback from shoreline, and shall be the shortest line between the side lot lines at such point.

G. Vegetation cutting restrictions.

1. Not more than 30 percent of the trees four (4) inches or more in diameter at breast height within 35 feet of the mean high-water mark may be cut over any 10 year period on any individual lot.
2. No cutting of any vegetation may take place within six feet of the mean high-water mark, except that up to 30 percent of the shorefront may be cleared of vegetation on any individual lot.
3. These standards do not prevent the removal of diseased vegetation, or of rotten or damaged trees or of other vegetation presenting safety or health hazards.

H. Guest cottages: One guest cottage is permitted per lot. Such structure: (1) shall be no greater than 750 square feet in gross floor area, (2) shall be no higher than 25 feet as measured from the lowest ground elevation to the peak of the roof, and (3) shall comply with the setback requirements for principal uses.

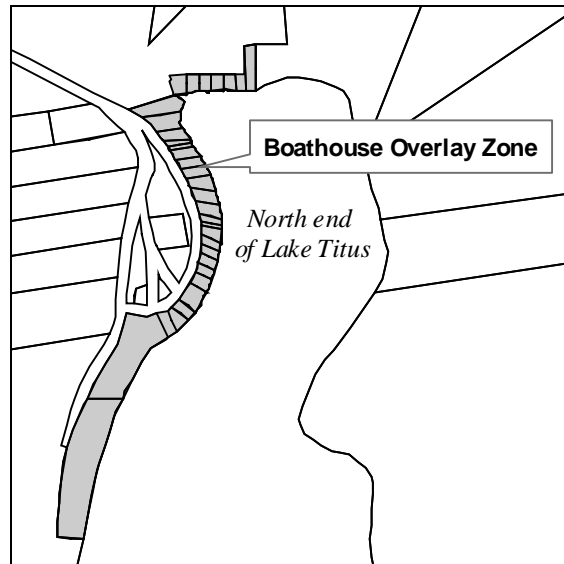
I. Boathouses: One boathouse is allowed per lot, and shall be used for the sole purposes of sheltering and storage of boats. No boathouse shall exceed twenty four (24) feet in width or fourteen (14) feet in height. No boathouse shall have plumbing or be used as overnight sleeping quarters. For purposes of this section a buildable lot means a lot that meets the minimum dimensional requirements for a single family dwelling.

**Section 455 Boathouse Overlay Zone**

- A. Permitted Uses. Any lot located within the Boathouse Overlay Zone may be used for the sole purpose of housing one boathouse without the issuance of a variance by the Zoning Board of Appeals. No boathouse shall exceed twenty four (24) feet in width or fourteen (14) feet in height. No boathouse shall be designed for lodging or residency, have plumbing, or be used as overnight sleeping quarters.
- B. Non-conforming lots. Within the Boathouse Overlay Zone a boathouse may be constructed without regard to minimum lot width, shoreline width and side yard building setbacks that apply to the RS Zoning District.



C. Map:



**Section 460 Access to Lake Titus**

The following shall apply within all zoning districts.

- A. Water Frontage Funneling. No residential development of land shall allow access to Lake Titus unless such access is supported by a minimum of 99 feet of shoreline frontage per dwelling unit.
- B. Contractual or deeded access. A minimum 99 feet of shoreline frontage is required for each lot providing contractual access to Lake Titus for existing and future dwellings not having separate and distinct ownership of shoreline frontage. Said minimum shoreline frontage shall be independent and separate from any shoreline frontage required for any existing or proposed shoreline building lot. (For instance, a shoreline lot granting shoreline access to one interior lot shall have at least 198 feet of shoreline frontage, 99 feet for the shoreline lot plus 99 feet for the contractual access lot.)

**Section 465 River Protection Overlay Zone**

Permitted land uses and dimensional requirements shall be determined by the underlying zoning district. Additional review requirements apply (see Section 820).

**Section 470 Airport Approach Protection Area**

All requirements of Chapter 4, Airport Approach Hazard Protection, of the Code of the Town of Malone, and any amendments thereto, shall apply in addition to all requirements of this zoning law.

## ARTICLE 5 SUPPLEMENTAL REGULATIONS

### ***Section 500 Residential Principal Buildings Per Lot***

- A. There shall be only one residential principal building per lot, except as follows: (a) multiple buildings may be placed on a single lot within a residential cluster development approved pursuant to Section 732; or (b) two single family dwellings or mobile homes may be placed on a single lot provided that they are situated such that were the lot to be subdivided in the future it would be possible for all the requirements of Schedule B to be satisfied, and each such subdivided lot could be served by its own on-site septic system, and have access to public or private road; or (c) as provided in Section 450 within the RS zoning district.
- B. For purposes of this section, a residential principal building means the building used as a dwelling, and does not include accessory buildings or structures. A single structure containing a commercial use that is also used as a residence shall be considered to be one principal residential building.

### ***Section 505 Existing Undersized Lots of Record***

- A. Any vacant lot legally recorded prior to the adoption of this law that at the time of such recording was in compliance with all dimensional requirements for single family dwellings in effect at the time, and that does not meet the minimum lot size, maximum average density, minimum lot width, minimum highway frontage, or shoreline lot width requirements as specified on Schedule B herein, shall be considered as complying with these regulations, and no variance shall be required for use of the lot, provided that: (a) such lot does not adjoin any other parcels held by the same owner which if combined with said lot would result in a larger lot, (b) minimum front, side and rear building setbacks as specified on Schedule B herein are satisfied, and (c) applicable requirements for on-site sewage disposal systems are satisfied.
- B. Such undersized lots of record may only be used for the purpose of erecting one single-family dwelling.
- C. Existing structures located on such undersized lots of record may be reconstructed or expanded without the issuance of a variance provided that minimum front, side and rear building setbacks as specified on Schedule B herein are satisfied; except that in the event of damage by fire, flood, wind, hurricane, tornado or other acts beyond the control of man, Section 515 (D) shall apply.

### ***Section 510 Non-conforming Building Setbacks***

Buildings existing prior to the adoption of this law which are placed closer to front, side or rear lot lines than permitted by Schedule B herein shall not be expanded within such setback areas without a variance from the Zoning Board of Appeals.

### ***Section 515 Non-conforming Uses and Structures***

Uses of land or structures that lawfully existed at the time this law was adopted and which would be prohibited or restricted by these regulations may be continued or maintained subject to the following conditions.

- A. Enlargement of buildings and structures.
  - 1. Buildings and structures which contain a non-conforming use may be enlarged by an amount not to exceed twenty-five (25) percent of the size of the building, as measured by

total floor area, without issuance of a variance by the Zoning Board of Appeals, provided that minimum building setbacks specified on Schedule B and green space buffer requirements of Section 430 are satisfied.

2. Buildings and structures which do not comply with the minimum building setbacks specified in Schedule B or green space buffer requirements of Section 430 shall not be expanded within the required building setback or buffer without the issuance of a variance by the Zoning Board of Appeals.
- B. Expansion of area. No non-conforming use may expand to occupy a greater area of land without the issuance of a variance by the Zoning Board of Appeals.
- C. Unsafe buildings and structures. Any non-conforming building or structure or portion thereof declared unsafe by proper authority may be restored to a safe condition.
- D. Restoration. Any building, structure or use which is nonconforming to the use, bulk or area provisions of this Local Law, which is damaged by fire, flood, wind, hurricane, tornado, or other acts beyond the control of man may be repaired or rebuilt according to its original use, bulk and area, provided such rebuilding or repair be accomplished within three (3) years after such damage occurs.
- E. Discontinuance. Whenever a non-conforming use has been discontinued for a period of one year the use shall not thereafter be re-established except as provided in paragraph F, and all future uses shall be in conformity with these regulations.
- F. Changes. Once changed to a conforming use, no building, structure or land so changed shall be permitted to revert to a non-conforming use without the issuance of a variance.
- G. Ownership. Any non-conforming use sold to another party may be continued, provided that such use is re-established within one year of the sale as specified in paragraph E.

### ***Section 520 Stream and River Protection***

- A. Stream regulations. This part shall apply to any stream or brook designated by the New York State Department of Environmental Conservation as class "AA," "A," "B," or "C." Such streams include, but are not limited to, Branch Brook, Collins Brook, East Branch Deer Creek, Salmon River, Townline Brook, Trout River, Plum Brook, and Winslow Brook.
1. All structures shall be set back at least fifty (50) feet from the bank of the stream.
  2. No vegetation shall be removed within ten (10) feet of the stream except for a thirty (30) feet clear area on each lot.
- B. The vegetative cutting standards of this section shall not be deemed to prevent the removal of diseased vegetation or rotten or damaged trees or other vegetation that presents safety or health hazards, nor shall it be deemed to prevent cutting lawns that were in existence at the date of adoption of this law.

### ***Section 525 Off-Road Parking***

- A. All uses shall provide adequate off-street parking for all vehicles parked during typical peak use periods.
- B. Parking areas shall be designed to eliminate the necessity to back out or to park on the shoulder of public roads.

- C. An overload of parking on to off-site areas, neighboring property, or road rights-of-way more than three times per month shall constitute a violation.
- D. A parking space shall not be less than 10 ft x 20 ft exclusive of access ways and driveways.
- E. No non-residential parking space shall be located within ten (10) feet of a side lot line.
- F. Existing uses must comply with these minimum off-road parking requirements if the use changes, if the use expands its gross floor area by twenty-five (25) percent or more during a three year period, or if the use is discontinued for a period of one year and seeks to be reestablished.
- G. In calculating the number of required parking spaces, fractional portions shall be rounded to the nearest whole number.
- H. For uses not specifically listed in part J below, the requirement shall be the same as for the most similar use listed, as otherwise provided in this law, or as determined by the Planning Board.
- I. The Planning Board shall have the authority to reduce or increase the requirements stated in paragraph J at the time of Site Plan or Special Use permit approval. Requirements may be reduced if the applicant can demonstrate the need for fewer parking spaces.
- J. Minimum number of required parking spaces:

1, 2 or multi- family residence	2 spaces per dwelling unit
Senior citizen housing	1.5 spaces per dwelling unit
Professional offices	1 space per 200 s.f. of office area
Retail stores and service shops	1 space per 200 s.f. of gross floor area
Place of public assembly (eating and drinking establishment, church, meeting hall, funeral home, and similar uses)	1 space per 3 seats
Tourist accommodation, bed and breakfast	1 space per unit or sleeping room
Place of employment	1 space per employee on largest shift in addition to any of the above requirements

**Section 530 Storage of Petroleum Based Products**

Any storage of petroleum based products, including but not limited to gasoline, oil or kerosene, shall include adequate provision for insuring that leaks are prevented, and that any leak, rupture or spill will be contained and not introduced into any reservoir, pond, stream, creek or any other water body.

**Section 535 Outdoor Lighting**

Outdoor lighting shall be the minimum required to meet any legal requirements and ensure patron safety. Lighting devices shall be oriented and shielded to minimize disturbance on surrounding properties. Lighting shall be directed onto the lot in such a manner that no direct beam of light or excessive glares shine onto other properties or the highway.

**Section 540 Fences and Hedges**

Fences and hedges shall not constitute a traffic hazard, and shall not obscure the line of sight of traffic.

## ARTICLE 6 SIGN REGULATIONS

### ***Section 610 Prohibited Signs.***

- A. The following are prohibited in all zoning districts.
  - 1. Moving, flashing, blinking, or animated signs.
  - 2. Signs over forty (40) feet in height.
  - 3. Signs affixed to a building that extend higher than the roof of the building.
  - 4. Off premise advertising signs, meaning any signs primarily intended to advertise an activity not conducted on the premises or a product not available for sale on the premises. (Signs primarily intended to inform travelers as to the location and type of business conducted at a particular location are considered directional signs, and are permitted.)
- B. The following are prohibited in R1, R2, RS, SC, and F zoning districts.
  - 1. Luminous signs.
  - 2. Strings of lights, banners, streamers, or spinners.

### ***Section 615 Signs Not Requiring Zoning Permit.***

- A. The following signs may be erected and maintained without a Zoning Permit.
  - 1. Any sign erected by the federal, state, county, or town government or any department or agency thereof.
  - 2. Temporary signs, including banners or pennants, relating to garage, lawn, or other individual, non-recurring sales, or for a church bazaar, political campaign, fund drive, parade, fair, fireman's field day, or other event or undertaking conducted by a political, civic, religious, charitable, or educational organization. Such signs shall be removed by the sponsor within three (3) days after the close of the event.
  - 3. Temporary signs, customarily of paper or cardboard, placed in the windows of grocery stores, supermarkets, or other stores to advertise specials.
- B. The following signs may be erected and maintained without a Zoning Permit, provided that they are less than four (4) square feet in sign area and are non-illuminated except as indicated below.
  - 1. Signs advertising the sale or rental of the premises upon which the sign is located, limited to two (2) per property, and that are removed within five (5) days of closing of sale or rental.
  - 2. Signs denoting the architect, engineer, or contractor where construction, repair, or renovation is in progress, limited to one per property.
  - 3. Professional and trade name plates and home business signs. Such signs may be illuminated by external white light only and shall be limited to one per person or business.
  - 4. Signs that mark property boundaries, give directions for roads or trails, prohibit trespassing, hunting, fishing, or off-road vehicles, or warn of hazards.
  - 5. Signs giving the name of the residents of a dwelling and/or its address. Such signs may be illuminated by external white light only and shall be limited to one per dwelling.
  - 6. A sign placed temporarily to advertise a garage sale or the sale of produce grown or harvested by the property owner where the subject sign is located, limited to one per principal location of the subject of the sign. Such temporary signs shall be removed immediately after the termination of the activity being advertised.

**Section 620 Permitted Signs**

The following signs are allowed on the property of a non-residential use after issuance of a Zoning Permit. Any other sign is not permitted except as provided in subsection B above.

A. All zoning districts. Non-illuminated off-premise directional signs not exceeding four (4) square feet in area are permitted in all zoning districts.

B. CG Zoning Districts

1. Each business or non-residential use is permitted: (a) one free standing sign not exceeding eighty (80) square feet in area; and (b) one sign affixed to a building not exceeding one square foot in area for each linear foot of face of building or (80) square feet, whichever is less.
2. In the case of a shopping center or other arrangement whereby more than one non-residential use is part of a single development the following are permitted: (a) one free standing sign not exceeding eighty (80) square feet in area for the entire development; (b) for each business or non-residential use in the development, one sign not exceeding twenty square feet in area, either suspended from the free standing sign or mounted separately, and (c) one sign affixed to a building not exceeding one square foot in area for each linear foot of face of building or (80) square feet, whichever is less..
3. An attached sign on a building of which the building front is located more than one hundred (100) feet but less than one hundred and fifty (150) feet from the centerline of a highway may be increased in area by one-third more than that allowed. An attached sign on a building of which the building front is located one hundred fifty (150) feet or more from the centerline of a highway may be increased in area by two-thirds more than that allowed.

C. MX, C and AG Zoning Districts

1. Each business or non-residential use is permitted (a) one free standing sign not exceeding fifty (50) square feet in area; and (b) one sign affixed to the face of a building not exceeding one square foot in area for each linear foot of face of building or thirty-six (36) square feet in area, whichever is less.
2. In the case of a shopping center or other arrangement whereby more than one non-residential use is part of a single development the following are permitted: (a) one free standing sign not exceeding thirty six (36) square feet in area for the entire development; (b) one sign suspended from the free standing sign for each business or non-residential use in the development not exceeding eight square feet in area; and (c) for each business or non-residential use in the development, one sign affixed to the face of a building not exceeding thirty six (36) square feet in area.

D. SC and F Zoning Districts

1. Each business or non-residential use is permitted one sign not exceeding not exceeding twenty (20) square feet in area, either free standing or attached to the face of a building.
2. The height of a free standing sign shall not exceed 20 feet.

E. R1, R2, RS Zoning Districts

1. Each business or non-residential use is permitted one sign not exceeding not exceeding eight (8) square feet in area, either free standing or attached to the face of a building.

2. The height of free standing sign shall not exceed ten (10) feet.

**Section 625 Placement of free standing signs**

No sign shall obscure a line of sight for traffic, or otherwise constitute a traffic hazard. All signs shall be placed at least twenty (20) feet from any side lot line and five (5) feet from the edge of the highway right-of-way. No free standing sign shall be placed between three (3) and ten (10) feet above ground level.

**Section 630 Computation of sign area**

The area of a sign shall be computed as including the entire surface within the frame of a sign. For a sign consisting of letters painted on or attached onto a building, the sign area shall be calculated by multiplying the average height of the letters by the distance between the first and last letters. Only one side of a double-faced sign shall be measured when determining the area.

**Section 635 Other regulations.**

The following apply to signs in all zoning districts.

- A. No luminous sign, indirectly illuminated sign, or lighting device shall be placed or directed so as to cause beams of light to be cast upon any public highway, sidewalk, or adjacent premises, or otherwise to cause glare or reflection that may constitute a traffic hazard or nuisance. No sign shall contain any mirror or mirror-like surface..
- B. No motor vehicle, trailer, or wagon upon which is painted or placed any sign shall be parked or stationed in a way which displays the sign to the public.
- C. All signs shall be constructed of durable materials and maintained at all times in good repair.
- D. No advertising sign shall be maintained with respect to an enterprise, which, for a period of one year, conducts no business, or with respect to a product or service that is no longer offered by the enterprise maintaining the sign.

**Section 640 Unsafe, Illegal and Obsolete Signs**

In any case where the Zoning Enforcement Officer shall find any sign unsafe and a potential danger to persons or property, or if he shall find any sign which in his judgment has been erected, installed, attached, established, painted or otherwise created in violation of this Local Law, he shall follow the procedures in respect to violations set forth in Article 11 herein, and the provisions of said Article shall apply in respect to prosecution, penalties and punishment for such violations..

**Section 645 Non-Conforming Signs**

For the purposes of this local law a sign is considered a "structure" and subject to the provisions of Section 515.

**Section 650 Sign Variances**

Any variance from the requirements of this Article shall be considered an "area variance" pursuant to Section 910, and not a "use variance."

## ARTICLE 7 ADDITIONAL REGULATIONS FOR CERTAIN USES

### Section 700 Adult Uses

- A. Purposes. In the execution of this section it is recognized that there are some uses which, due to their very nature, have serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land uses. It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Malone.
- B. Location. Adult uses are restricted as to location in the following manner.
1. Adult uses shall not be located within a one thousand (1000) foot radius of any area zoned for residential use. Measurement of the distance shall be measured from the shortest distance between the boundary of the residential use zone and the property line of the proposed adult use.
  2. Adult uses shall not be located within a one thousand (1000) foot radius of another such use. Measurement of the distance shall be from the property lines of the uses.
  3. Adult uses shall not be located within a one thousand (1000) foot radius of any school, church, temple, mosque or other place of religious worship, park, playground or playing field, day-care facility, governmental building or post office. Measurement of distances shall be from the property lines of the uses.
  4. Adult uses shall not be located within five hundred (500) feet from any property classified by the State's Office of Real Property Service as residential. Measurement of distances shall be from the property lines of the residential property and the proposed adult use.
- C. Additional Requirements. Adult uses must comply with the following additional requirements in order to control the secondary effects of such uses on the surrounding community.
1. In any adult use where there is provided the performance of live dancers, said dancers shall perform only on a stage or platform which is at least 18 inches above the immediate floor level and which is removed at least six feet from the nearest patron.
  2. In any adult use where there is provided the performance of live dancers, no entertainer or dancer shall touch any guest or the clothing of a guest.
  3. There shall be no outdoor display or advertising of any kind, other than one business identification sign complying with all signage requirements set forth in this law.
  4. All adult uses shall take place within an enclosed building.
  5. All building openings, entries, windows and doors of the adult use shall be located, covered or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property.
  6. All off-street parking areas and premises entries of the adult use shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business of personal safety of patrons and employees, and to reduce the incidents of vandalism and criminal conduct.



7. No adult use may remain open at any time between the hours of 12:00 a.m. and 10:00 a.m. on weekdays and Saturdays. No adult use may remain open at any time on Sundays. No one under the age of 18 shall be permitted into or on the premises of the adult use.
- D. Waivers. The Zoning Board of Appeals is hereby authorized is waive the restrictions enumerated in Subsections B and C above if the applicant shows and the Board finds that all the following conditions have been satisfied.
1. That the proposed adult use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this section will be observed.
  2. That the establishment of an additional Adult Use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or nonresidential.
  3. That 51% or more of the property owners within the restricted area, as defined in Subsection B(1) of this section, have signed a petition stating that they have no objection to the establishment of one of the uses defined above.
- E. Application Information. In addition to the information required for Zoning Permit and Special Use Permit application as required elsewhere in this law, the following is required.
1. If the applicant is an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age.
  2. If the applicant is a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
  3. If the applicant is a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
  4. If the applicant is a company, including but not limited to limited-liability companies, the company shall state its complete name, its owners, members and managers.
  5. If the applicant intends to operate the adult use under a name other than that of the applicant, he or she must identify the adult use's fictitious name.
  6. The applicant's mailing address and residential address.
  7. Whether the applicant has been convicted of a crime and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
  8. The location of the proposed adult use, including a legal description of the property, street address, and telephone number(s), if any, and the exact nature of the adult use to be provided.
  9. A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing adult uses within 1,000 feet of the proposed location of the new adult use, as well as any schools, churches, temples, mosques or other places of religious worship, parks, playgrounds and playing fields, day-care facilities, governmental buildings or post offices within 1,000 feet of the proposed location of the new adult use; the boundary of any area zoned for residential use that is within 1,000 feet of the proposed location of the adult use; and, finally, the boundary of any residential property located within the C-G General Commercial District.
  10. Property owner's written consent to the proposed adult use.

- F. Inspections. In owner or operator of an adult use shall permit the Zoning Enforcement Code Officer to inspect the premises of such adult use for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- G. Number of Uses per Parcel. No more than one of the following adult uses shall be located on any single tax map parcel: adult book and/or video store; adult entertainment cabaret; adult motion-picture theatre; adult theatre; unlicensed massage establishment.

**Section 702 *Bed And Breakfast Establishment***

- A. The business shall be conducted within a single-family dwelling that is the principal residence of the operator.
- B. A bed and breakfast establishment shall have accommodations for not more than 12 guests.
- C. If meals are offered, they shall be offered only to registered lodgers.
- D. Facilities and services shall be offered solely to registered lodgers and not to the general public.

**Section 704 *Campground, Recreational Vehicle Park***

- A. Minimum lot size: 5 acres.
- B. Campgrounds and recreational vehicle parks shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation, and recreational purposes. The removal of wheels, and placement of a unit on a foundation in a camping ground is prohibited.
- C. Each campground or recreational vehicle park shall have adequate access to a public highway, and each recreational vehicle site shall be serviced from interior roadways.
- D. A campground or recreational vehicle park shall be divided into campsites. The corners of each campsite shall be clearly marked, and each campsite shall be numbered for identification.
- E. The minimum size of each campsite shall be 2500 square feet, provided however, that there shall be no more than 10 campsites per acre.
- F. There shall be a minimum fifty (50) feet green space buffer surrounding the campground or recreational vehicle park. No campsite or portion thereof, building, structure or roadway shall be placed within the buffer area.
- G. No campsite shall be located within seventy-five (75) feet of the mean high water mark of any water body.
- H. The Planning Board may require that the campground or recreational vehicle park be substantially screened from the view of public roads and neighboring properties by use of vegetation and/or fencing.
- I. Each campground or recreational vehicle park shall comply with all applicable rules and regulations of the New York State Department of Health.
- J. Adequate plans shall be made for the collection and disposal of garbage, rubbish and solid wastes generated within the park. There shall be no on-lot exposed garbage, junk, or other wastes. The operator shall provide for the pick up of trash at least once a week.
- K. Mobile homes, whether permanent or temporary, shall not be parked or stored in any campground or recreational vehicle park.

**Section 706 *Condominium and Cooperative Development***

- A. Requirements of this law, including use restrictions and dimensional requirements, shall be determined by the physical form and proposed use of the development, not by the form of ownership.

- B. A multiple family dwelling that is also a condominium or cooperative shall meet the standards for a multiple family dwelling.
- C. In a single family housing development which is also a condominium or cooperative development each dwelling shall meet the minimum lot size and setback requirements for single family dwellings.
- D. A residential cluster development that is also a condominium or cooperative development shall comply with the regulations for residential cluster development as provided herein.
- E. All state regulations pertaining to the creation of condominium or cooperative developments shall be satisfied.

**Section 708 Fuel Distribution Business**

- A. Location. No fuel distribution business shall be located within 500 feet of any public park, church, educational facility, nursing home, public building or other place of public gathering.
- B. Setbacks. No structure or storage area for fuel or equipment shall be located within:
  - 50 feet of any adjoining property line.
  - 100 feet of any stream, lake, pond, wetland or other body of water.
  - 50 feet from the right-of-way of any public highway
- C. Fencing. The Planning Board may require that a fence be erected and maintained adequate to prevent the entrance of children and others into the area of the activity of business and to contain the fuel storage area.
- D. Screening. Where a fuel distribution business would be visible from a public highway or from neighboring properties the Planning Board may require that a fence be erected and maintained sufficient to screen the fuel storage area from view. The Planning Board may approve the planting of a vegetative screen consisting of evergreen trees or shrubbery as an alternative to such fence.
- E. Approved Storage. The Planning Board may specify what types of fuel or materials may be stored at the facility, where they may be stored, and the manner in which they may be stored in order to protect employees, customers and the public from risk of fire, explosion, surface or groundwater contamination, or other hazard.

**Section 710 Home Based Business with Vehicles or Equipment**

- A. The following may be parked or stored on the property where the business owner resides, provided that any such trucks, trailers or equipment are parked and/or stored under conditions and in a location approved by the Planning Board: any truck or trailer, any piece of earth moving equipment, any well-drilling rig, or any other similar heavy equipment or vehicle used in the conduct of the business
- B. Any materials stored outdoors on the property for use in such business must be stored under conditions and in a location approved by the Planning Board.
- C. Within the Scenic Corridor Zoning District the following shall apply: No vehicles or equipment used in the conduct of the business, nor any materials stored outdoors on the property for use in the business, shall be visible from State Route 30.
- D. No use shall create a nuisance on any surrounding property, including but not limited to, noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or traffic hazard.

**Section 712 Home Based Manufacturing**

- A. Home based manufacturing must be conducted within a dwelling that is a bona fide residence of the principal practitioner, or within an accessory building on the residential property such as a garage or barn.

- B. Not more than two persons other than a resident of the dwelling shall be employed as part of the home occupation.
- C. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home based manufacturing exists.
- D. There shall be no outdoor storage of materials used in the manufacture of the product.
- E. Goods for sale may be displayed out of doors in locations approved by the Planning Board.
- F. Not more than one truck or trailer greater than 20 feet in length used in connection with the home manufacturing business shall be parked or stored on the property at any time, except for temporary, but not overnight, parking for purposes of pick-up or delivery of merchandise.
- G. There shall be sufficient off-street parking spaces provided such that at no time are delivery, employee, or customer vehicles parked along public roads or highways.

**Section 714 Home Occupation**

- A. No more than 25% of the total floor area of a dwelling unit or 500 square feet, whichever is less, may be used for such use.
- B. The use shall be carried on wholly within the enclosed walls of the dwelling unit or an accessory building by a member of the family residing in the dwelling unit.
- C. No more than two persons from outside the family shall be employed full- or part-time.
- D. There shall be no external evidence of such use except for one unlighted sign not to exceed two square feet in area mounted flush with and on the front facade of the dwelling unit.
- E. No stock, merchandise, equipment or displays of any kind shall be visible outside the dwelling unit or accessory building.
- F. The following uses and other uses similar in character shall not be considered to meet the intent of this section: vehicle repair; vehicle body work; veterinary hospital, kennel or stable; bar and/or restaurant; dancing instruction to groups; musical instruction to groups; medical treatment, doctors, dentists; any use that is not permitted in a Type 5 (wood frame) building construction under the New York State Uniform Fire Prevention and Building Code.
- G. A home occupation shall not be open to the public at a time earlier than 8:00 a.m. nor later than 9:00 p.m.
- H. A home occupation shall not involve the use or storage of tractor-trailers, semi-trucks or heavy equipment such as fuel trucks, logging or construction trucks or equipment.
- I. Deliveries shall not exceed those normally and reasonably occurring from a residence and shall not include more than four deliveries of products or materials per day.
- J. The home occupation shall not cause a significant increase in traffic in the vicinity.
- K. Sufficient off-street parking is required. The Planning Board shall have the authority to determine what is sufficient.
- L. No offensive noise, vibration, glare, dust, fumes, odors or electrical interference shall be produced.
- M. The home occupation shall not detract from the residential character of the neighborhood.

**Section 716 Individually Sited Mobile Homes**

- A. All mobile homes shall be in compliance with standards equal to or more strict than the U.S. Department of Housing and Urban Development (HUD) Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (1976). The owner or applicant is responsible for providing adequate assurance that these standards have been complied with. The presence of a permanent certification label affixed to the mobile home by the manufacturer shall be presumptive evidence that the construction of a mobile home is in compliance with such standards.

- B. Each mobile home shall be placed on a stand that provides adequate support for the placement and tie-down of the mobile home. The stand may be constructed of gravel, concrete, or other suitable material, and shall be designed to not heave, shift or settle unevenly due to frost action.
- C. Each mobile home shall be secured with anchors or tie-downs to stabilize the structure in conformance with manufacturer's recommendations or State building code, whichever is greater.
- D. Each mobile home not provided with a continuous masonry wall foundation shall be provided with skirting to screen the space between the mobile home and the ground. Such skirting shall be of non-transparent durable material such as wood, stone, cement block, or vinyl, and shall not consist of wire mesh, bales of hay, or transparent plastic. Such skirting shall be installed within 90 days of occupancy.
- E. Tires, pieces of metal, boards, cement blocks, bricks and similar loose objects shall not be placed upon a roof of a mobile home.
- F. No mobile home may be used for any purpose other than for a single-family residence, business office or similar use as determined by the Planning Board. A mobile home shall not be used as a storage building.
- G. Exceptions. None of the provisions of this section shall be applicable to any mobile home located on the site of a construction project, survey project or other similar work project and used solely as a field office or work or tool house in connection with such project, provided such mobile home is removed from said site within thirty (30) days after completion of such project.

### **Section 718 Junkyards**

- A. Location. No junk storage area shall be located within:
  1. 500 feet of any public park, church, educational facility, nursing home, public building or other place of public gathering.
  2. 50 feet of any adjoining property line.
  3. 100 feet of any stream, lake, pond, wetland or other body of water.
  4. 50 feet from the right-of-way of any public highway.
- B. Fencing. There must be erected and maintained an eight (8) foot high fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and others into the area of the activity or business, and to contain within such fence the materials dealt with by the operator of the junkyard. All junk shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts shall be accomplished within the enclosure.
 

Fencing requirements may be waived where topography or other natural conditions effectively prohibit the entrance of children and others.
- C. Screening. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence provided in part B above shall be of wood or other materials sufficient to totally screen the junkyard from view. Such screening may be permitted by adequate planting of evergreen trees or shrubbery.

- D. Burning. No materials shall be burned in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 215).
- E. Burying. No junkyard items shall be buried in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 360).

### **Section 720 Keeping of Farm Animals**

- A. Applicability. This section shall apply to all lands located within the following zoning districts: Residential 1 (R1), Residential 2 (R2), Residential Seasonal (RS) and Mixed Use (MX). Lands located within other zoning districts are exempt. Farms containing active farmland, as defined herein, are also exempt.
- B. Definition of Farm Animals. For purposes of this section farm animals shall include horses, ponies, donkeys, other equines, cattle, goats, pigs, llamas, sheep, chickens, turkeys, ratities, and similar animals. Dogs and cats, and household pets kept within a dwelling, are not included in the definition of farm animals.
- C. Uses permitted without a Zoning Permit. The keeping of cattle, horses, ponies donkeys or other equine is permitted without the issuance of a Zoning Permit provided that all the following conditions are satisfied.
  - 1. The parcel of land where farm animals are kept is two acres or larger in area.
  - 2. There is at least one acre of unconstrained land per each horse, pony, donkey, other equine, or head of cattle.
  - 3. Buildings, pens and other structures used to house or contain farm animals are located at least 50 feet from any lot line or roadway (as measured from the edge of the driving surface), and at least 100 feet from any well or waterway.
  - 4. Any refuse pile, compost or waste material pile from farm animals is located at least 50 feet from any lot line or roadway (as measured from the edge of the driving surface), and at least 100 feet from any well or waterway.
- D. Uses permitted after issuance of a Special Permit. The following are allowed after issuance of a Special Permit by the Planning Board: (a) the keeping of cattle, horses, ponies donkeys or other equine in greater numbers than that allowed by subsection C (2) above, and (b) the keeping of pigs, fowl or sheep and other farm animals.
- E. Special Permit standards.
  - 1. No pigs or fowl shall be kept within 200 feet of any neighboring property line.
  - 2. In order to approve a Special Permit the Planning Board shall find that the proposed keeping of animals will not interfere with the reasonable use and enjoyment of neighboring properties.
  - 3. The Planning Board shall condition their approval to minimize adverse impacts to neighboring properties. If sufficient mitigation is not possible, the Planning Board shall deny the permit.

### **Section 722 Kennels, Animal Hospitals**

- A. Minimum lot size: five (5) acres
- B. Adequate landscaping or fencing shall be provided to create a visual buffer between such facility and adjacent property.

- C. All buildings, structures or other accessory uses shall be at least (50) feet from any property line.
- D. No animals shall be kept, either indoors or outdoors, within 500 feet of any neighboring residential structure that was in existence at the time that the kennel or animal hospital became a legally established use.
- E. All animals, except livestock, shall be kept within a totally enclosed building between 6 p.m. and 6 a.m.

**Section 724 Mineral Extraction, Commercial Sand or Gravel Extraction**

- A. All mining activities shall obtain required permits from the NYS Department of Environmental Conservation.
- B. No mining activity except travel along haul roads shall be conducted within 500 feet of an existing residential structure.

**Section 726 Mobile Home Parks**

The following shall apply to all mobile home parks developed or expanded after the date of adoption of this law.

- A. Construction standards. All mobile homes shall be in compliance with standards equal to or more strict than the U.S. Department of Housing and Urban Development (HUD) Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (1976). The owner or applicant is responsible for providing adequate assurance that these standards have been complied with. The presence of a permanent certification label affixed to the mobile home by the manufacturer shall be presumptive evidence that the construction of a mobile home is in compliance with such standards.
- B. Minimum Size. A mobile home park shall have an area not less than ten (10) acres.
- C. Components. Mobile home parks shall provide individual mobile home lots for lease or rent, access roadways, and parking.
- D. Lot dimensions. Each mobile home lot shall be at least 8000 square feet in area, at least seventy-five (75) feet wide, and at least seventy-five (75) feet deep.
- E. Building setbacks.
  1. All mobile homes, and any additions thereto including porches and patios, shall be a minimum distance of fifteen (15) feet from side and rear lot lines, and a minimum distance of twenty (20) feet from the front lot line or from any road line.
  2. An unattached garage or other accessory building shall be minimum distance of ten (10) feet from side lot and rear lot lines, and twenty (20) feet from the front lot line or from any road line.
  3. No mobile home lot, office, or building shall be closer to a public road right-of-way than one hundred (100) feet, or closer to a neighboring property line than fifty (50) feet.
- F. Green space buffer. A minimum green space buffer of at least one-hundred (100) feet from any public road and at least fifty (50) feet from any neighboring property line is required. The green space buffer shall be maintained as a vegetated area. No buildings, roads, parking, or storage of materials or vehicles shall be permitted within the required green space buffer. The Planning Board may waive any requirement of this paragraph at the time of site plan approval provided that such waiver shall not adversely impact the public health, safety or general welfare of the community.
- G. Screening from State Routes. Any mobile home park shall be substantially screened from view from and State Highway by means of natural topography, existing vegetation, or by planting a vegetative screen as approved by the Planning Board.

- H. Landscaping plan. A landscaping plan is required. The landscaping plan must be approved by the Planning Board.
- I. Road access. Each mobile home lot shall front on an internal access roadway. No mobile home lot shall front directly onto a Town, County or State highway.
- J. Internal roads. All access roadways shall be at least thirty (30) feet wide, and have a gravel or paved surface at least eighteen (16) feet wide with two (2) feet shoulders on each side. Roads shall be underlain by gravel at least twelve (12) inches deep, with adequate ditching and drainage. Adequate turnarounds for traffic and fire equipment shall be provided.
- K. Parking. Parking space for each lot shall be provided within each lot and such space shall be at least twenty feet by twenty feet, (20' X 20'). No vehicles shall be parked upon roadways within the park.
- L. One home per lot. Every mobile home within a mobile home park shall be located on a mobile home park lot. Not more than one mobile home shall be located on any one mobile home park lot.
- M. Additions. No additions shall be made to a mobile home except a canopy and/or porch open on three sides, an addition made by the mobile home manufacturer, or an addition built in conformance with the State Building Construction Code for one-family dwellings.
- N. Accessory building. No more than one accessory building, not to exceed four hundred (400) square feet, shall be permitted on any mobile home park lot.
- O. Skirting. The park owner shall require and include in the park regulations that each mobile home shall be enclosed at the bottom with a skirting or enclosure, which shall meet New York State Uniform Fire Prevention and Building Code regulations, within thirty (30) days of placement of the mobile home. Such skirting shall be on non-transparent durable material such as wood, stone, cement block, or vinyl, and shall not consist of wire mesh, bales of hay, or transparent plastic, and shall be maintained in good repair.
- P. Stand. All mobile homes shall be placed on a stand that provides adequate support for the placement and tie-down of the mobile home. The stand may be constructed of gravel, concrete, or other suitable material, and shall be designed to not heave, shift or settle unevenly due to frost action.
- Q. Tie downs. Each mobile home shall be provided with anchors or tie-downs capable of securing the stability of the mobile home. Anchors/tie-downs shall be placed at least at each corner of the stand.
- R. Objects on roofs. Tires, pieces of metal, boards, cement blocks, bricks and similar loose objects shall not be placed upon a roof of a mobile home.
- S. Water supply and sewage disposal. Water supply and sewage disposal systems shall be designed and constructed in compliance with all county and state requirements.
- T. Garbage disposal. An adequate secured area shall be provided and maintained on each-park lot for the collection of garbage. The park owner shall be responsible for regular and adequate collection and disposal of garbage. All outdoor garbage containers shall be secured from dogs, raccoons, birds and other creatures at all times.
- U. Utilities. All public utilities (electric, gas, cable TV, telephone, and similar utilities) shall be installed underground.
- V. Non-automobile parking. No campers, travel trailers, recreational vehicles, or unregistered and unlicensed motor vehicles shall be parked or stored on any park lot except in areas designated and approved for parking or storage. Boats may be parked on an individual lot, but shall be a minimum distance of fifteen (15) feet from side and rear lot lines, and a minimum distance of twenty (20) feet from the front lot line or from any road line.
- W. Road names and lot numbers. Each roadway shall be named and noted upon signs at each roadway intersection. Each mobile home lot shall be assigned a permanent number, which shall be noted on the mobile home lot in a location clearly visible from the roadway.
- X. Road Maintenance. Every roadway within a mobile home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park



and necessary fire, police, ambulance, public utility maintenance and fuel supply vehicles. The park owner shall be responsible for providing and paying the cost of such maintenance and all necessary snow removal.

- Y. Bus Shelter. A sheltered bus stop shall be provided adequate for the anticipated number of school children living within the park. A space shall be provided for a bus to safely pull off the roadway to receive and discharge passengers.

### ***Section 728 Motor Vehicle Service and/or Repair***

- A. All vehicles awaiting service, pick-up by customers, or otherwise stored overnight on the lot shall be parked within a vehicle parking area approved by the Planning Board.
- B. All junk wastes such as discarded parts or portions of vehicles shall be stored in an enclosed structure or fenced area so as to not be visible from adjacent properties.
- C. The Planning Board may require a green space buffer, vegetative screening and/or solid or picket fencing in order to reduce visual impact upon surrounding properties.

### ***Section 730 Recreational Vehicles not in Recreational Vehicle Parks***

- A. No recreational vehicle that is not located in a recreational vehicle park may be connected to water, sewer or electrical utilities except for a temporary thirty (30) day period.
- B. No recreational vehicle may be stored on a property except that the owner of a recreational vehicle may store it on his or her own property provided that such vehicle is stored either in an enclosed garage, or out-of-doors no closer to the property line than as specified by the minimum front yard, rear yard and side yard requirements of Schedule B.
- C. No permanent structural addition, such as a porch, shall be added onto any recreational vehicle.

### ***Section 732 Residential Cluster Development, Residential Cluster Subdivision***

- A. The use of cluster development, whereby buildings are grouped together closer than otherwise would be permitted by the minimum lot size, minimum lot width and minimum building setbacks as specified in this law, and where portions of the site are set aside as permanent open space, is permitted subject to the standards specified below. A residential cluster development may consist of separate dwelling units on a single parcel of land, or as dwelling units each on its own parcel of land. If the development consists of a single parcel of land, such development shall require review and approval as a Special Use pursuant to this zoning code. If the development consists of dwelling units on individual lots, such development shall require review and approval as a subdivision pursuant to Chapter 59, Realty Subdivisions, of the Code of the Town of Malone in addition to its approval as Special Use pursuant to this zoning code.
- B. Residential Cluster Subdivision. Required minimum lot size, minimum lot width, and minimum building setbacks as specified in Schedule B of this law may be reduced provided that standards of subsection D below are satisfied.
- C. Residential Cluster Development on a Single Parcel of Land. Dwellings may be placed closer together than would otherwise be permitted by the minimum lot width, lot size, road frontage, building setback and other dimensional requirements of this law were each structure to be located on a separate parcel of land, provided that standards of subsection D below are satisfied.
- D. Standards

1. A residential cluster development shall consist of (5) or more dwellings or principal structures proposed placed on a single lot, or a subdivision of five (5) or more lots in single ownership or in ownership by a group of owners acting in concert.
  2. The total number of dwellings permitted on the site shall not exceed the number which would otherwise be permitted by application of the required minimum lot size for single family dwellings to the site. Wetlands shall be excluded in determining the number of dwellings permitted on the site.
  3. The number of principal structures proposed to front on existing public roads shall not exceed the number which could otherwise front upon such roads in a conventional subdivision layout designed in compliance with minimum lot width requirements.
  4. All buildings and structures within a residential cluster development shall be set back at least 200 feet from any state highway and 100 feet from other public highway, as measured from the edge of the highway right-of-way.
  5. All building and structures within a residential cluster development shall be screened from view of any public highway by a vegetative buffer. This requirement may be waived by the Planning Board at the time of Special Use Approval if in their judgment there would be no adverse visual impact of the development.
  6. Open areas within the site shall be chosen so as to facilitate one or more of the following objectives: to preserve views, to provide recreation areas, to serve as a buffer between neighboring properties or streets, to preserve wooded areas and hedgerows, to preserve wildlife habitat, to preserve historic sites or structures, to protect environmentally sensitive features (such as providing green space buffers for streams), or to preserve any areas which add to the quality of the residential environment and/or benefit the community at large.
  7. Provision, whether by deed restriction, covenant, or other legal arrangement, shall made to ensure that the undeveloped portion of the parcel remain as permanent open space or recreation area: (a) Designated open space areas may be owned privately by individuals. Adequate provision shall be made by covenant, deed restriction or other legal means to insure that future owners are aware of the development restrictions upon such areas. (b) Open space or recreation areas may be owned in common by individuals within the subdivision. In such case, covenants or other legal arrangements shall specify ownership of the cluster open space, method of maintenance, responsibility for maintenance, maintenance taxes and insurance, compulsory membership and compulsory assessment provisions, and any other specifications deemed necessary by the Planning Board. (c) Open space or recreation areas may be deeded to the Town upon approval of the Town Board.
- E. In their approval of site plans for cluster development the Planning Board shall maintain accurate records and maps showing the location of permanent open spaces. No further development upon the designated open spaces shall be permitted.

**Section 734 Retail Gasoline Sales**

- A. Gasoline and/or fuel pumps and above ground or underground fuel storage tanks shall not be located closer to any side or rear lot line than the minimum setbacks for buildings as specified in Schedule B of this law.
- B. Gas pumps shall be set back far enough from the road line so as to not present a traffic hazard as a result of vehicles waiting in line at the gas pumps.
- C. All applicable provisions of the New York State Uniform Fire Prevention and Building Code shall be satisfied.

**Section 736 Seasonal Roadside Stands**

Seasonal roadside stands shall be located at least ten (10) feet from any public highway right-of-way. Entry, exit and parking shall not constitute a traffic hazard.

**Section 738 Telecommunication Towers**

All provisions of Chapter 73, Telecommunication Towers, of the Code of the Town of Malone shall be satisfied.

**Section 740 Windpower Generating Facilities**

All provisions of Chapter 78, Wind Energy Facilities, of the Code of the Town of Malone shall be satisfied.

**Section 742 Yard, Porch or Garage Sales**

Yard sales, porch sales, garage sales and sales of a similar nature shall be conducted in a manner so as to not constitute a traffic hazard, and shall be in compliance with all applicable New York State rules and regulations.

**ARTICLE 8 SITE PLAN REVIEW AND APPROVAL, SPECIAL USE PERMITS**

**Section 800 Site Plan Review and Approval, General Provisions**

- A. Applicability. All uses designated by the letter “p” on Schedule A herein shall require Site Plan Review and Approval.
- B. Purpose. The purpose of Site Plan Review and Approval is to insure that the design, layout and operation of an allowed use within a district: (a) minimizes adverse impacts upon neighboring properties, the natural and man-made environment, roadways, and the community in general, (b) is in keeping with the character of the area in which it is located, and (c) is consistent with the goals and objectives of the Town of Malone Comprehensive Plan.
- C. Planning Board Authority. The Planning Board is hereby authorized to review and approve site plans. The Planning Board shall approve no site plan unless it finds that the standards stated in this article are satisfied, and that adverse impacts are mitigated to the extent practicable.
- D. Public Hearing. A public hearing is optional, at the discretion of the Planning Board, for uses requiring site plan review and approval.

**Section 805 Special Use Permits, General Provisions**

- A. Purpose. It is the policy of the Town of Malone to allow a variety of uses of land within many of the zoning districts provided that such uses do not adversely affect neighboring properties, the natural environment, or the character of the area in which they are located, and provided that such land uses are consistent with the goals and policies stated in the “Town of Malone Comprehensive Plan.” While a particular use may be generally suitable within a zoning district as indicated on Schedule A herein, it is recognized that each physical site and each specific land use is unique, and that a particular use may not be compatible in a specific location.

- B. Planning Board Authority. The Planning Board is hereby authorized to issue Special Use Permits for Special Uses. No Special Use Permit shall be issued unless the board finds that the standards stated in this article are satisfied. A Special Use Permit shall be denied if a significant adverse impact is found to exist that cannot be adequately mitigated so as to render the impact non-significant.
- C. Public Hearing. A public hearing is required for uses requiring a Special Use Permit.
- D. Site Plan Review. All uses requiring Special Use Permits shall also require Site Plan Review and Approval.

**Section 810 General Site Plan Approval Standards**

The following standards shall apply to all uses requiring Site Plan Approval in all zoning districts.

- A. Impact Upon Surrounding Properties. Land use and development shall be planned and undertaken so as to avoid adverse impacts on adjoining and nearby land uses, especially residential uses, and shall not adversely affect the character of the neighborhood. The proposed use shall not create a significant adverse impact upon nearby properties by reason of traffic, noise, fumes, odors, vibration, flashing lights, litter, surface water or groundwater contamination, air pollution, drainage, visual impact, excessive night time lighting, creation of a safety hazard, risk of fire or explosion, or any other cause. The location, nature and height of buildings, walls and fences shall not discourage the appropriate development and use of adjacent land and buildings, nor significantly impair their value.
- B. Vehicular Access. Proposed vehicular access points shall be adequate in width, grade, alignment and visibility; not located too near road intersections or places of public assembly; and meet similar safety considerations.

To the extent practicable, intersections with and entries onto any public road shall be designed so that minimum safe sight distances and other standards set forth in "Policy and Standards for Entrances to State Highways," State of New York Department of Transportation publication number M.A.P. 7.12-34, shall be maintained. As set forth in the above cited publication, the minimum unobstructed line of sight in each direction at the entrance to a public road shall be as follows:

Design Speed of Highway	Left Turn	Right Turn
30 mph	396 feet	286 feet
40 mph	583 feet	484 feet
50 mph	814 feet	770 feet

Said distances shall be measured from the point of entry onto the public road. (Said distances represent the safe braking distance for traffic along the public road.) It is not the intent of this provision to deny the ability to develop any particular lot, but to insure that the best possible location for access onto a public highway is chosen.

- C. Emergency Vehicle Access. All proposed buildings, structures, equipment and materials shall be readily accessible for fire and police protection.
- D. Buffers, Screening. In all zoning districts except the General Commercial (CG) districts, the following uses shall be substantially screened from view of pre-existing neighboring residential

properties at all seasons of the year by vegetation or by fencing of a design and type approved by the Planning Board: retail gasoline sales, vehicle repair or sales establishments, campgrounds and recreational vehicle parks, mining, industrial uses, junk yards, fuel distribution businesses, and any other use which in the judgment of the Planning Board may have an adverse visual impact upon neighboring properties or the community in general. For purposes of this part, a pre-existing residential property shall mean any lot of record that contains a residential structure at the time a complete application for the proposed use is received by Planning Board.

- E. Landscaping Plan. Any proposed use involving the construction of a new building or addition larger than 2000 square feet or any parking area greater than 2000 square feet shall require the submission of a landscaping plan as part of the application. The landscaping plan shall show the location, type and size of species to be planted or to be retained on the site. The Planning Board may require that such plan be prepared by a professional architect, engineer, landscaper, or planner. This requirement may be waived by the Planning Board in the case of minor projects.
- F. Drainage and Erosion Control. Adequate provision shall be made for drainage of the site, and to insure that storm water runoff does not create an adverse impact upon nearby lands or waterways. Appropriate erosion control measures shall be taken to prevent the pollution of waterways by silt and sediment. All NYS Department of Environmental Conservation rules and regulations pertaining to erosion and runoff control shall be satisfied.
- G. Water Quality Protection. Adequate provision shall be made to insure that any leak, spill or other discharge of petroleum based products or other chemical potentially harmful to surface water or groundwater supplies are contained and are prevented from being introduced into such waters. Approval may require that potentially harmful materials be stored on an impervious pavement, enclosed by an impervious dike high enough to contain the volume of liquid kept in the storage area, and/or be separated from any shoreline, watercourse, or storm water runoff channel by adequate setback.
- H. Lighting. Exterior lighting shall be directed down and away from adjoining residential properties and public roads, and shall not constitute a traffic hazard. Lighting shall be shielded from shining into the nighttime sky so as to prevent light pollution. High intensity lighting shall be minimized.
- I. Impact upon Historic Resources. Adverse impacts to the integrity of neighboring properties of local, state, or national historic significance shall be minimized. To the extent practicable, a proposed use or development shall be designed to harmoniously blend with the historic resource by use of appropriate building designs, color schemes, and building materials, as well as by utilizing green space buffers and vegetative screening.
- J. Water supply. Adequate provision shall be made for water supply.
- K. Sewage disposal. On-site disposal systems shall comply with all applicable state and local regulations.
- L. Noise. Where surrounding properties may be adversely impacted by noise, sound levels exceeding 55 dBA between the hours of 7 AM and 11 PM, or exceeding 45 dBA between the hours of 11 PM and 7 AM, as measured at the property line, shall be avoided.

**Section 815 Scenic Corridor District Standards**

The following standards shall apply to all uses requiring Site Plan Approval within the Scenic Corridor District.

- A. Design Standards. Buildings shall be designed to be consistent with the scenic rural character of the Scenic Corridor District. Such character shall be determined by the Planning Board, who shall consider traditional building designs, color schemes and building materials found in the region to be consistent with such character. In general, clapboard siding, log construction, or wood siding combined with earth tone color schemes shall be preferred. Building colors should blend with the natural landscape so that development does not take on a visual prominence. Overly bright, garish, brilliant, luminescent or Day-Glo colors shall be avoided. Vertical plywood siding such as T-111 and asphalt shingles shall be avoided. Asphalt or composite shingle, slate or standing seam metal are preferred materials for visible roofing. Roof colors should be neutral to dark. Untreated “galvanized” roofing and highly reflective roofing shall be avoided.
- B. Signs. Signage shall comply with the requirements of Article 6 of this law. The design and color of signs shall not detract from the scenic character of the corridor. Painted signs with indirect lighting shall be preferred.
- C. View Preservation. Views of the surrounding countryside shall be preserved to the extent practicable.
- D. Landscaping Plan. A landscaping plan showing the location and type of all species to be planted or retained on the site shall be required for all uses within SC District that require Site Plan Approval. The Planning Board may require that the site plan be prepared by a professional landscape architect, engineer, landscaper, or planner.

**Section 820 River Protection Overlay District Standards**

The following standards shall apply to all uses requiring Site Plan Approval within the River Protection Overlay District.

- A. Adequate measures shall be taken to insure that erosion and runoff from construction or use of the site does not adversely impact water quality or aquatic habitats of the Salmon River.
- B. The Planning Board shall give consideration to preserving aesthetic values and visual access to the river, as well as to achieving consistency with the policies of the Malone Local Waterfront Revitalization Program pursuant to the “Town and Village of Malone Waterfront Consistency Review Law,” if such law has been adopted by the Town of Malone.
- C. The provisions of Section 520 shall apply.

**Section 825 Special Use Standards**

In order to approve a Special Use Permit, the Planning Board shall find that the following standards are satisfied.

- A. General Site Plan Review standards of Section 810.
- B. Additional requirements for certain uses of Article 7, where applicable.
- C. Scenic Corridor District standards of Section 815, where applicable.

- D. River Corridor Overlay Zone standards of Section 820, where applicable.
- E. Consistency with the policy standards of the Malone Local Waterfront Revitalization Program, where applicable.

**Section 830 Conditions**

In approving a Site Plan or Special Use Permit application the Planning Board shall have the authority to impose such conditions and restrictions on the design, layout and operation of a proposed land use and development that it deems reasonable to fulfill the purposes of this law, including but not limited to:

- A. Requiring landscaping or vegetative screening, and/or the retention of existing vegetation, to minimize adverse visual impact.
- B. Increasing building setback or other dimensional requirements.
- C. Limiting the size or height of buildings, structures, parking areas or facilities.
- D. Specifying the location and design of entrances, exits, and off-street parking space.
- E. Requiring that materials be stored indoors or certain activities be conducted indoors.
- F. Limiting hours of operation to reduce noise impacts on neighboring properties..
- G. Requiring storm water retention ponds or other drainage and pollution control devices.

**Section 835 Application for Site Plan Approval and/or Special Use Permit (Minor Projects)**

An application for approval of a minor project, as defined herein, shall include all information required by Section 215.

**Section 840 Application for Site Plan Approval and/or Special Use Permit (Major Projects)**

An application for approval of a major project, as defined herein, shall include all information required by Section 215 and the following.

- A. A vicinity map at a scale of 1 inch = 2000 feet that shows the relationship of the project to the surrounding area. Such map may be superimposed on a NYS Department of Transportation planimetric quadrangle map of the area that shows land contours as well as other features.
- B. Three copies of a site plan map, drawn to an approved scale, prepared by a professional architect, landscape architect, engineer, or surveyor. The map shall include as applicable:
  - 1. Title of drawing, including name and address of the applicant, the landowner (if different), and the person responsible for preparation of such drawing.
  - 2. North arrow, scale and date.
  - 3. Boundaries of the property plotted to scale.
  - 4. Land contours at appropriate intervals.
  - 5. Existing watercourses, bodies of water, drainage patterns.
  - 6. Proposed grading and drainage plan and/or storm water management plan.
  - 7. Location, design, type of construction, proposed use and exterior dimensions of all proposed buildings.
  - 8. Location, proposed use and height of all buildings, structures and site improvements including culverts, drains, retaining walls, and fences.
  - 9. Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
  - 10. Location of outdoor storage, if any.

11. Provision for handicapped access.
12. Description of the method of sewage disposal and location of the facilities.
13. Identification of water sources; if well, locate.
14. Location, size and design and construction materials of all proposed signs.
15. Location and characteristics of all buffer areas, including existing vegetative cover.
16. Location and design of outdoor lighting facilities.
17. Landscaping plan.

C. Accompanying data, to include the following as applicable.

1. Application form and fee.
2. Name and address of applicant and any professional advisors.
3. Property deed, or authorization of owner if applicant is not the owner of the property.
4. Estimated project construction schedule.
5. Identification of any permits required from other governmental bodies.
6. Environmental Assessment Form, Part I.
7. Waterfront Assessment Form for projects within the River Protection Overlay Zone.
8. Any additional endorsements, certifications or approvals required by the Planning Board.
9. Other information as the Planning Board may reasonably require to assess the proposed project; such as location of fire lanes and hydrants, provisions for pedestrian access, or designation of the amount of building area proposed for use for retail sales or other commercial activity.

#### ***Section 845 Waiver of Submission Requirements***

The Planning Board may waive one or more submission requirements required in Section 215 or Section 840 in the case of projects of an uncomplicated nature.

#### ***Section 850 Reimbursable Costs***

Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant. Prior to incurring such costs the Planning Board shall discuss such costs with the applicant, and may require that an escrow account be established for such purpose.

#### ***Section 855 Procedure***

Applications for Site Plan Approval and/or a Special Use Permit shall be processed in the following steps.

- A. Preliminary Review. The Planning Board shall undertake a preliminary review of an application at its first regularly scheduled meeting after the application is submitted. At the review the Board shall determine: (a) whether the application is complete, (b) whether a public hearing will be required, (c) what further action will be necessary to fulfill the requirements of SEQRA. If the application is deemed to be incomplete, then the applicant shall be notified in writing of what additional information is required.
- B. SEQRA. Pursuant to the New York State Environmental Quality Review Act (SEQRA) the Planning Board in its initial review of an application shall: (1) determine that no further action is necessary to fulfill the requirements of said act, (2) require that a Short Environmental Assessment Form be submitted in order to determine if a Full Environmental Assessment



Form will be required, or (3) require that the applicant submit a Full Environmental Assessment Form (EAF) for its review. Upon review of a Full EAF the Planning Board shall issue either a negative declaration, a conditioned negative declaration, or a positive declaration. If a positive declaration is issued, the Board shall require that an Environmental Impact Statement be prepared pursuant to SEQRA.

- C. Hearing. A public hearing is optional, at the discretion of the Planning Board, for uses requiring Site Plan Approval only. A public hearing is mandatory for Special Use Permit applications. Such hearing shall be conducted within sixty-two (62) days of the receipt of a complete application. Notice of the hearing shall be given to the applicant at least ten (10) before the hearing, and shall be printed in a newspaper of general circulation in the town at least ten (10) days prior to the hearing. Certain actions require that notice of the hearing be mailed to the Warren County Planning Board ten (10) days prior to conducting the hearing, as further specified in Section 1240 herein.
- D. Decision. The Planning Board shall render its decision to approve, approve with conditions, or deny the application within sixty-two (62) days after the hearing, or within sixty-two (62) days of the receipt of a complete application if no hearing is held, unless an extension is mutually agreed upon.
- E. Record of Decision. Within five (5) business days after such decision is rendered it shall be filed in the Office of the Town Clerk, and a copy shall be mailed to the applicant. All records of decision shall be in writing, and shall contain findings of fact that support the decision. The record shall contain any conditions or modifications required by the Planning Board, and if the site plan is disapproved shall state the reasons for disapproval

***Section 860 Procedure if Variance Is Required***

Should an application require both a variance and Site Plan Approval the Planning Board shall have the authority to approve the site plan, and the Zoning Board of Appeals shall have the authority to grant the variance. The applicant must meet all conditions required in both approvals.

***Section 870 Procedure if Located within RP Overlay Zone***

All uses requiring Site Plan Approval located within the River Protection Overlay Zone shall comply with the procedures required by the Town and Village of Malone Waterfront Consistency Review Law, if such law has been adopted by the Town of Malone.

## **ARTICLE 9 APPEALS TO THE ZONING BOARD OF APPEALS**

### ***Section 900 Application for Variance***

An applicant may initiate a request for a variance by filing an application with the Zoning Board of Appeals using forms supplied by the Board. The applicant shall include a copy of the tax map which shows the property; a map drawn to scale showing existing features and the planned variance; and other drawings or information the Zoning Board of Appeals deems necessary.

### ***Section 910 Requirements for Area Variances***

- A. Area variances may be granted where the dimensional or physical requirements of this law cannot be reasonably met, including but not limited to minimum lot size, minimum highway frontage, minimum building setback, maximum height of buildings, and maximum size or height of signs.
- B. In making its determination the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community. In making such determination the board shall consider:
  - 1. Whether an undesirable change in the character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance.
  - 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
  - 3. Whether the requested variance is substantial.
  - 4. Whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood.
  - 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- C. Any area variance granted shall be the minimum necessary for the applicant to make reasonable use of the property.

### ***Section 920 Requirements for Use Variances***

- A. A use variance may be granted to allow land to be used for a purpose which is otherwise not permitted by this law.
- B. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals each of the following:
  - 1. For each and every allowed use within the zoning district where the property is located, including uses allowed after Site Plan Approval or issuance of a Special Use Permit, the applicant cannot realize a reasonable return, provided that lack of return is substantial and is established by competent financial evidence.
  - 2. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

3. That the requested use variance, if granted, will not alter the essential character of the neighborhood.
  4. That the alleged hardship has not been self-created.
- C. Any use variance granted shall be the minimum necessary to address the unnecessary hardship proven by the applicant.

***Section 930 Grant of Variance with Conditions***

In granting any variance the Zoning Board of Appeals shall have authority to impose such reasonable conditions as are related to the use of the property for the purpose of avoiding or minimizing any adverse impact the exercise of such variance may have on the neighborhood, community, or environment.

***Section 940 Appeals of a Decision by the Zoning Enforcement Officer (ZEO)***

- A. Any appeal from a decision of the ZEO pursuant to this law shall be made within sixty (60) days after the ZEO files said decision.
- B. An appeal may be made by any person aggrieved by the decision, or by an officer, department, board or bureau of the Town.
- C. An appeal shall stay all proceedings in furtherance of the action appealed from unless the ZEO certifies to the Zoning Board of Appeals that by reason in the facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings may not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record.

***Section 950 Review and Approval Procedure***

Upon receipt of a complete application the Zoning Board of Appeals shall take the following actions:

- A. Schedule a public hearing within sixty-two (62) days and provide notice of such hearing by publication in a newspaper of general circulation in the town at least ten (10) days prior to the date thereof.
- B. Conduct a public hearing on the matter as scheduled.
- C. Within sixty-two (62) days of the close of the public hearing, the Zoning Board of Appeals shall render a decision. Said time period may be extended by mutual consent of the applicant and the Board.
- D. All decisions shall be in writing, shall be filed with the Town Clerk within five (5) business days of the decision, and a copy thereof shall be provided to the applicant.

## ARTICLE 10 ADMINISTRATION

### **Section 1000 Zoning Enforcement Officer**

The duty of administering and enforcing the provisions of this Law is hereby conferred upon the Zoning Enforcement Officer (ZEO), who shall be appointed by the Town Board.

### **Section 1005 Duties of the Zoning Enforcement Officer**

- A. Administer the Zoning Law. The ZEO shall review all applications for zoning permits and, if the requirements for such permit are met, he shall issue a permit. If the applicant's plans do not meet the Zoning requirements, he shall deny the permit. The ZEO may not use discretionary judgment. He must enforce the "letter of the law".
- B. Referral to the Zoning Board of Appeals. An applicant after being denied a zoning permit; or any aggrieved person, or any officer, department or board of the Town, may appeal the ZEO's findings to the Zoning Board of Appeals for an interpretation or variance. Should an appeal be requested the ZEO shall notify the Zoning Board of Appeals of the request and forward all necessary supporting information.
- C. Referral to Town Planning Board. The ZEO shall forward any application that requires Site Plan Approval or a Special Use Permit to the Planning Board along with all supporting information.
- D. Cite Zoning Violations. For any plans, construction, building, use or premise found in violation of this law, including any violation of any approved Site Plan or Special Use Permit, the ZEO shall order the responsible party, in writing, to remedy the conditions. The ZEO shall have the authority to secure from the Town Justice a stop order to restrain the continuance of the violation.
- E. Report to Town Board. The ZEO shall issue a monthly report to the Town Board describing and enumerating actions taken and permits issued. The ZEO shall provide a copy of such report to the Planning Board and Zoning Board.
- F. Public Record. Within 5 business days the ZEO shall file all permit actions, including all correspondence with regard to violations, with the Town Clerk.

### **Section 1010 Planning Board**

- A. The Town Board may select a chairperson of the Planning Board, or on failure to do so, the Planning Board shall elect a chairperson from its own members.
- B. The Planning Board may adopt rules or bylaws for its operation.
- C. The Town Board may provide an appropriation to the Planning Board to cover necessary expenses including the means for the Planning Board to maintain a written record of its meetings and public hearings.
- D. The existing Planning Board, as currently constituted as of the date of this local law, shall continue.

### **Section 1015 Powers and Duties of Planning Board**

The Planning Board shall have the following powers and duties with respect to this law:

- A. Review and approval of Site Plans in accordance with the standards and procedures set forth herein.
- B. Issuance of Special Use Permits.
- C. Submittal of an advisory opinion to the Town Board for any proposed amendment to this law.

- D. On the request of the Town Board, or on its own initiative, submittal of an advisory opinion to the Town Board in any matter relating to planning and zoning.
- E. Any other powers and duties as specified elsewhere in this law.

**Section 1020 Meetings of the Planning Board**

- A. Meetings shall be held at such meeting times as the Board may determine, or at the call of the chairperson.
- B. A quorum shall consist of a majority of its members, but any motion or resolution, including any decision to approve or disapprove a Site Plan, shall require for its adoption an affirmative vote of at least a majority of the entire membership.
- C. A member of the Planning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- D. The Planning Board of Appeals may require the Zoning Enforcement Officer to attend its meetings to present any facts relating to any matter before the Board.
- E. All meetings of the Planning Board of Appeals shall be open to the public.
- F. The Planning Board of Appeals shall keep minutes of all of its meetings. The Town Board shall provide a secretary for the Zoning of Appeals.
- G. The Planning Board of Appeals shall make factual record of all its proceedings.

**Section 1025 Zoning Board of Appeals**

- A. The Town Board shall appoint a chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Zoning Board of Appeals may designate a member to serve as acting chairperson.
- B. The Zoning Board of Appeals may adopt rules or bylaws for its operation.
- C. The Town Board may provide an appropriation to the Zoning Board of Appeals to cover necessary expenses including the means for the Board to maintain a written record of its meetings and public hearings.
- D. The existing Zoning Board of Appeals, as currently constituted as of the date of this local law, shall continue.

**Section 1030 Powers and Duties of the Zoning Board of Appeals**

The Zoning Board of Appeals shall have the following powers and duties with respect to this law: Review and decide on requests for variances to this law.

- A. Hear and render a decision on appeals to a decision made by the Zoning Enforcement Officer.
- B. Upon appeal from a decision by the Enforcement Officer, decide any question involving interpretation of any provision of this law, or the location of any district boundary line on the Zoning district map.
- C. In the case of lots in two or more zoning districts, grant special authorization to extend a zone district boundary up to 100 feet pursuant to Section 415 herein.

**Section 1035 Meetings of the Zoning Board of Appeals**

- A. The Zoning Board of Appeals shall hold meetings at the call of the chairperson, or at the request of a majority of its full membership.
- B. The presence of a majority of its full membership shall constitute a quorum for the conduct of business before the Board. A concurring vote of a majority of its full membership shall be necessary to act on any application for variance or appeal

- C. A member of the Zoning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- D. The Zoning Board of Appeals may require the Zoning Enforcement Officer to attend its meetings to present any facts relating to any matter before the Board.
- E. All meetings of the Zoning Board of Appeals shall be open to the public.
- F. The Zoning Board of Appeals shall keep minutes of all of its meetings. The Town Board shall provide a secretary for the Zoning of Appeals.
- G. The Zoning Board of Appeals shall make factual record of all its proceedings.
- H. Every decision or determination of the Zoning Board of Appeals shall be in writing, and shall be filed in the office of the Town Clerk.

**Section 1040 Amendments**

- A. The Town Board may amend by supplementing, or repealing, provisions of this law and the Zoning Map after public notice, public hearing, and required referrals in accordance with the governing statutes.
- B. The Town Board, by resolution, shall fix the time and place of public hearing on the proposed amendment and shall cause notice to be given as follows: (a) by publishing a notice at least ten (10) days in advance in the official newspaper of the Town, and (b) by referring the proposed amendments to the Village of Malone.
- C. Procedure. The procedure as to the notice of a public hearing on an enactment of a proposed amendment shall follow and be governed by Section 265 of the Town Law, and Section 239-m of the General Municipal Law, including all subsequent amendments thereto. The procedure shall also comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law.

**ARTICLE 11 ENFORCEMENT**

**Section 1100 Steps in the Enforcement Process**

The following procedures may be followed in order to enforce this law.

- A. Notice of Violation. The Enforcement Officer (EO) may serve a Notice of Violation on the landowner to inform him that a violation has occurred.
- B. Stop Work Notice. The EO may serve a Stop Work Order requiring that construction or other activity in violation must stop.
- C. Voluntary Compliance. Voluntary compliance may be sought.
- D. Injunction. The Town may seek a court order requiring that the activity in violation cease.
- E. Criminal Justice Proceedings. The Town may file an Information and Complaint to the local court to initiate court action.

**Section 1105 Violations**

- A. It shall be unlawful for any person to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building, structure or premises, or portion thereof, in violation of any provision of this law, or to construct, alter or use and occupy any building, structure or premises in a manner not permitted by or inconsistent with a permit, approval or variance issued pursuant to this law, or to fail to comply with a notice, directive or order of the Zoning Enforcement Officer or agent thereof.

- B. Where a violation has occurred or exists, the potentially responsible persons shall include the owner of the real property involved or affected; any contractor, subcontractor, builder, construction superintendent, engineer, manager, or other person responsible for undertaking, managing or directing the illegal activity; and any agent of the foregoing.

**Section 1110 Stop Work Order.**

- A. The Town Board for the Town of Malone hereby grants the Enforcement Officer the administrative responsibility of determining in the first instance whether a violation has occurred and immediately terminating said violation by posting a Stop Work Order on the premises herein the violation has occurred.
- B. The Stop Work Order shall serve notice to the owner, builder, developer, agent and/or any other individual or business on the premises that all such actions specified on the Stop Work Order must be terminated immediately.
- C. Relief or release from any stop-work order may be obtained as follows:
  - 1. Upon the recommendation of the Zoning Enforcement Officer or the Planning Board the Town Board may rescind a stop work order If all provisions of this law, together with all other reasonable conditions specified by the Zoning Enforcement Officer or Planning Board, are satisfied.
  - 2. If a variance is granted by the Zoning Board of Appeals granting permission to maintain violations specified in a stop-work order and to continue such circumstances, the Zoning Enforcement Officer shall rescind the stop-work order in accordance with the requirements of the Zoning Board of Appeals.

**Section 1115 Appeals**

Any person found to be in violation may appeal a decision of the Zoning Enforcement Officer to the Board of Appeals. Such appeal must be in writing and may be made no later that sixty (60) days from the date of the notice. An appeal to the Board of Appeals shall stay enforcement including the accumulation of fines and penalties from the date such appeal is filed in the office of the Board of Appeals to the date of a determination by the Board of Appeals

**Section 1120 Actions for Injunction**

The town may obtain an action to restrain by injunction any violation of this ordinance or any failure to comply with any of the provisions of this ordinance

**Section 1125 Criminal Justice Proceedings**

The Zoning Enforcement Officer or Town agent may commence criminal proceedings in the justice court by issuing an appearance ticket to any alleged violator and/or by filing an information and supporting deposition pursuant to the New York Criminal Procedure Law.

**Section 1130 Fines and penalties**

A violation of this local law is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand

dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

#### ***Section 1135 Alternative or Additional Actions and Remedies***

- A. In the case of any violation or threatened violation, the Town may institute any appropriate action or proceeding against the landowner and/or other responsible person(s) to prevent such unlawful action, to restrain, correct or abate such violation, and to compel compliance with the provisions of this law and any permit, approval or variance issued pursuant to its provisions. The relief specified herein may be sought in addition to an action or proceeding for criminal sanctions or civil penalties.
- B. The Town Board may negotiate appropriate corrective, remediation, abatement, and restoration measures by entering into an enforceable settlement agreement or consent order with any violator and/or owner. Such agreements or orders may require the violator and/or owner to pay a monetary penalty which (1) covers exemplary or punitive damages and (2) reimburses actual costs incurred by the Town in connection with its enforcement action such as attorneys' fees, disbursements and costs of emergency and other corrective and restoration measures.

#### ***Section 1140 Suspension of administrative review***

Review of any application pursuant to the provisions of this chapter may be suspended and the application deemed incomplete with written notice to the applicant if a stop-work order has been issued by the Zoning Enforcement Officer or agent thereof, other written notice of an alleged violation has been delivered to the property owner or applicant, or a criminal or civil action has been commenced against the property owner, applicant or other responsible person for alleged violations related to the development or activity or site for which the permit is sought or for any alleged violation of the provisions of this law related to the site.

#### ***Section 1145 Revocation of permit***

Any permit, approval, certificate, or variance granted under the provisions of this law which was based upon or granted in reliance upon the applicant's false or material misrepresentation in an application or the applicant's failure to make known a material fact or circumstance may be revoked by the Zoning Enforcement Officer. A revocation action may be taken after written notice to the property owner or applicant/permittee and opportunity for a hearing.

#### ***Section 1150 Removal of Violations***

Any building or structure erected, or any use conducted without a Zoning Permit or certificate of compliance, where required, or not in conformity with the provisions of this ordinance may be removed, closed, or halted at once by the Enforcement Officer with issuance of a stop order, with the assistance, if deemed necessary, of any appropriate Town Officer or employee. Any costs involved with removal (if deemed necessary) shall be paid by the owner of the property that is not in compliance.



## SCHEDULE A: USE CHART (page 1 of 4)

x = Permitted after issuance of a Zoning Permit by the Code Enforcement Officer

p = Permitted after Site Plan Approval

S = Permitted after issuance of a Special Use Permit

Blank = Not permitted (unless permitted by another row in the chart)

R1 Residential 1

R2 Residential 2

RS Residential Seasonal

C Countryside

AG Agriculture

F Forest

SC Scenic Corridor

CG1 General Commercial 1

CG2 General Commercial 2

MX Mixed Use

### Zones:

Residential Uses	C,								
	R1	R2	RS	AG	F	SC	CG1	CG2	MX
Single family dwelling	x	x	x	x	x	x	x	x	x
Two family dwelling	x	x		x	x	x	x	x	x
Dwelling unit within the same structure as a non-residential use	x	x		x	x	x	x	x	x
Three or four family dwelling, Townhouse	p	p		p	p	p	p	p	p
Assisted living facility for seniors	p	p		p	p	p	p	p	p
Guest Cottage			x						
Hunting or fishing cabin				x	x				
Mobile home	x			x	x	x	x	x	x
Mobile home park				S	S				
Nursing or convalescent home	p	p		p	p		p	p	
Residential cluster development	S	S		S	S	S	S	S	S
Senior citizen housing development	p	p		p	p	p	p	p	p
Travel trailer used as a residence				x	x				x
Wind energy conversion system (WECS), small	S	S		S	S	S	S	S	S
Residential accessory use or structure	x	x	x	x	x	x	x	x	x

**SCHEDULE A: USE CHART (page 2 of 4)**

<b>General Uses</b>	<b>R1, R2</b>	<b>RS</b>	<b>C, AG</b>	<b>F</b>	<b>SC</b>	<b>CG1</b>	<b>CG2</b>	<b>MX</b>
Agricultural use or structure	x		x	x	x	x	x	x
Airport, private airstrip, heliport			S	S		S	S	
Church, house of worship, cemetery	p		p	p	p			p
Not-for-profit fire, ambulance or public safety use						S	S	
Not-for-profit recreational facility	p		p	p	p	p	p	p
Firing range, fish and game club			p	p				
Forestry use or structure			x	x	x			
Golf course	p		p	p	p	p	p	p
Government building	S		S	S	S	S	S	S
Group camp			p	p				
Membership club such as VFW	S		p	p	p	p	p	p
Open space recreation use	S	S	p	p	S	p	p	p
Public park or recreational area	p		p	p	p	p	p	p
School	S		S	S	S	S	S	S
Public utility use	S		S	S	S	S	S	S
Telecommunications facility or tower	S		S	S	S	S	S	S

**SCHEDULE A: USE CHART (page 3 of 4)**

<b>Commercial Uses</b>	<b>R1, R2</b>	<b>RS</b>	<b>C, AG</b>	<b>F</b>	<b>SC</b>	<b>CG1</b>	<b>CG2</b>	<b>MX</b>
Adult entertainment establishment						S		
Animal hospital, veterinarian, kennel			S	S		p	p	S
Auction facility			p	p	S			
Automobile, vehicle, or lawn and garden equipment sales			S	S		p	p	S
Bank						p	p	S
Bed and Breakfast establishment	S		p	p	S	p	p	p
Business office			p	p	S	p	p	p
Commission sales stables			S			S	S	S
Campground, recreational vehicle park			S	S	S			S
Construction or well-drilling business			p	p		p	p	S
Convenience store (may include gas pumps)	S		S	S	S	p	p	S
Day care center	S(c)		p	p	S(c)	p	p	S
Funeral home			S	S		p	p	S
Greenhouse, florist, greenhouse (commercial)			p	p	S	p	p	S
Home based business with vehicles or equipment			p	p	S	p	p	S
Home based manufacturing	S		p	p	S	p	p	S
Home occupation	x	x	x	x	x	x	x	x
Motor vehicle race track			S					
Motor vehicle service and/or repair			S	S		p	p	S
Nursery			p	p	S	p	p	p
Personal service establishment			p	p	S	p	p	S
Recreational or entertainment facility			p	p	S	p	p	S
Restaurant			p	p	S	p	p	S
Retail gasoline sales			S	S		p	p	S
Retail service establishment			S	S		p	p	S
Retail store, small (a)			p	p	S	p	p	S
Retail store, large (b)						p	p	S
Riding stable, commercial			S	S	S			S
Seasonal roadside stand	p		p	p	p	p	p	p
Shopping center						S	S	S
Ski center with or without tourist accommodations			S	S	S			
Tavern			S	S	S	p	p	S
Tourist accommodation			S	S	S	p	p	S
Tourist attraction			S	S				S
Other Commercial use (d)						S	S	

**SCHEDULE A: USE CHART (page 4 of 4)**

<b>Industrial, Warehousing and Other Uses</b>	<b>R1, R2</b>	<b>RS</b>	<b>C, AG</b>	<b>F</b>	<b>SC</b>	<b>CG1</b>	<b>CG2</b>	<b>MX</b>
Fuel distribution business			S			S	S	S
Junkyard			S			S	S	
Industrial use						S	S	
Light industrial use						S	S	S
Lumber yard			S	S		S	S	S
Mining			S	S				S
Heating, plumbing, electrical, metal or similar fabrication or welding shop			S			S	S	S
Research or testing laboratory			S			S	S	S
Sawmill, chipping mill, pallet mill, or similar wood using facility			S	S		S	S	S
Resource recovery facility			S			S	S	S
Trucking business						S	S	S
Wholesaling, warehousing, or distribution facility						S	S	S

**Uses Prohibited in all Zones**

Commercial incinerator

Private landfill

Wind energy conversion system (WECS), large

Any other use not listed as x, p, or S in this schedule for the zoning district in which it is located.

**Notes:**

- (a) Retail store with floor area 2000 square feet or less.
- (b) Retail store with floor area of more than 2000 square feet.
- (c) Day care center operated within an owner-occupied dwelling only.
- (d) Any use involving the sale, rental or distribution of goods or services.



**SCHEDULE B: LOT SIZE AND DIMENSION CHART** (page 2 of 3)

**Three or Four Family Dwelling, Townhouse Development**

	<b>Zone:</b>			
	<b>R1, R2, AG, C</b>	<b>SC</b>	<b>FR</b>	<b>CG1, CG2, MX</b>
Minimum lot size	1 acre or 10,000 s.f. per dwelling unit, whichever is greater	2 acres or 10,000 s.f. per dwelling unit, whichever is greater	2 acres or 10,000 s.f. per dwelling unit, whichever is greater	1 acre or 10,000 s.f. per dwelling unit, whichever is greater
Minimum road frontage	50 ft	400 ft	50 ft	50 ft
Minimum lot width	200 ft	400 ft	200 ft	200 ft
Minimum lot depth	none	none	none	none
Minimum building setback from: (b) State highway Other road	100 ft 75 ft	100 ft 75 ft	100 ft 75 ft	100 ft 75 ft
Minimum side building setback	50 ft	50 ft	50 ft	50 ft
Minimum rear yard	30 ft	30 ft	30 ft	30 ft
Maximum height	40 ft	40 ft	40 ft	40 ft

**SCHEDULE B: LOT SIZE AND DIMENSION CHART** (page 3 of 3)

**Non-Residential Land Uses**

	<b>Zone:</b>							
	<b>R1</b>	<b>RS</b>	<b>C, R2</b>	<b>AG</b>	<b>SC</b>	<b>FR</b>	<b>CG1,CG2</b>	<b>MX</b>
Minimum lot size (d)	1 acre		1 acre	1 acre	2 acres	2 acres	1 acre	1 acre
Minimum road frontage Abutting a state highway Abutting other road	200 ft 200 ft		200 ft 200 ft	200 ft 200 ft	400 ft 300 ft	300 ft	150 ft 150 ft	200 ft 150 ft
Minimum lot width With access to a state highway With access to other road	200 ft 200 ft		200 ft 150 ft	200 ft 150 ft	300 ft 300 ft	200 ft	150 ft 150 ft	200 ft 150 ft
Minimum lot depth	none		none	none	none	none	none	none
Minimum shoreline frontage, Lake Titus								
Minimum building setback from: (b) State highway Other road	100 ft 75 ft		100 ft 75 ft	100 ft 75 ft	100 ft 75 ft	75 ft	100 ft 75 ft	100 ft 75 ft
Minimum shoreline building setback from Lake Titus (c)								
Minimum side building setback	30 ft		30 ft	30 ft	50 ft	30 ft	15 ft	30 ft
Minimum rear yard	30 ft		30 ft	30 ft	30 ft	30 ft	15 ft	30 ft
Maximum height	40 ft		40 ft	40 ft	40 ft	40 ft	40 ft	40 ft

- (a) Minor residential street. A loop street, short dead end or cul-de-sac, or other roadway within a residential subdivision which is not intended to serve through traffic. Such streets are commonly constructed by developers to serve a specific residential subdivision. Any dead-end public highway that serves a residence and is less than ¼ mile (1340 feet) in length, and any private road, shall be deemed to be a minor residential street.
- (b) Measured from road centerline
- (c) Exception: one boathouse on the shoreline is permitted per lot, not to exceed 24 feet in width or 14 feet in height.
- (d) No minimum lot size for public utility structures or roadside stands.